

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KEVIN J LEEPER
8900 NE 25TH ST #114
CARLISLE IA 50047

WAL-MART STORES INC
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08758-CT
OC: 08/03/03 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge of Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated August 5, 2004, reference 04, which held that no disqualification would be imposed regarding Kevin Leeper's separation from employment. After due notice was issued, a hearing was held by telephone on September 7, 2004. The employer participated by Brandon Stucki, District Loss Prevention Supervisor. Exhibits One through Five were admitted on the employer's behalf. Mr. Leeper did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Leeper was employed by Wal-Mart from October 28, 2003 until July 8, 2004 as a full-time night maintenance worker. He was discharged because of theft.

The Wal-Mart where Mr. Leeper worked has an automated can redemption machine for customer use. If the customer is unable to put the cans or bottles through the machine, they are brought to the customer service desk for redemption. A maintenance worker then takes the accumulated items from the service desk and forces them through the machine. The worker takes the ticket printed by the redemption machine and gives the ticket to service desk personnel. The tickets the maintenance person gives to the service desk enable the service desk's register to balance as the tickets represent money paid out by the service desk to customers who were unable to put their items through the machine themselves.

On June 22, 2004, Mr. Leeper cashed in redemption machine tickets in the amount of \$12.65. The transaction raised suspicions and Mr. Leeper was questioned about the tickets. He told the employer that he had found the tickets and did not know that cashing them in was contrary to the employer's policies. The employer accepted his offer to make restitution. The loss prevention department became involved in the matter and conducted an investigation. The video surveillance tape showed Mr. Leeper leaving the customer service desk with a cart of bottles and cans and heading out the door in the direction of the redemption machine. The time stamp on the video surveillance coincided with the time recorded on the redemption machine tickets he cashed in. Based on this information, loss prevention concluded that Mr. Leeper had not merely found the tickets but had kept the tickets from the cart of cans and bottles he had taken from the customer service area to force through the machine. As a result of this conduct, he was discharged on July 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Leeper was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Leeper was discharged for theft of company assets. He took cans and bottles belonging to the employer and put them through the redemption machine as required. However, he cashed the redemption tickets valued at \$12.65 and retained the money when he knew the tickets were supposed to be returned to the customer service desk. Given the employer's video surveillance and the pertinent time frames, it seems extremely unlikely that he simply found the tickets as he told the employer.

Theft from one's employer is clearly contrary to the type of behavior an employer has the right to expect. For the reasons cited herein, it is concluded that the employer has satisfied its burden of proving misconduct. Accordingly, benefits are denied. No overpayment results from this reversal of the prior allowance as Mr. Leeper has not claimed benefits since filing his additional claim effective July 11, 2004.

DECISION:

The representative's decision dated August 5, 2004, reference 04, is hereby reversed. Mr. Leeper was discharged for disqualifying misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf