

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

REBECCA L MAST
1217 N DAKOTA APT #1
AMES IA 50014

WAL-MART STORES INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02119-DWT
OC 01/18/04 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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 11, 2004 decision (reference 01) that concluded Rebecca L. Mast (claimant) was qualified to receive unemployment insurance benefits, the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 16, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Ryan Koerkemeier, the district loss prevention supervisor, and Yvone Hamilton appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 13, 2001. She worked full time as the employer's customer service manager.

During her employment, the cash register drawer the claimant operated was frequently short. On December 21, 2003, the employer's security camera recorded the claimant putting a \$100.00 bill into her pocket. Koerkemeier learned about this on December 23, 2003. He began investigating, but did not find any conclusive evidence that the claimant took the money for herself.

During the week of January 11, Koerkemeier learned about a January 9 incident involving the claimant. On January 9, the claimant bought several items for a total purchase price of around \$60.00. The claimant used coupons that totaled \$32.00. The claimant then paid the remaining \$28.00 balance. Later that same day, the claimant returned all the items she had purchased and took \$60.00 in cash, when she was only entitled to receive \$28.00.

On January 16, Koerkemeier talked to the claimant. She admitted she had taken the \$100.00 in December and knew she was not entitled to receive \$60.00 in cash for the returned items, but she needed the money to pay her bills. The employer discharged the claimant for theft.

The claimant established a claim for unemployment insurance benefits during the week of January 18, 2004. She filed claims for the weeks ending January 25, February 21 and 28, 2004. She received her maximum weekly benefit amount of \$171.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's conduct, taking money from the employer that did not belong to her, amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of January 18, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the

overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 25, February 21 and 28, 2004. She has been overpaid a total of \$513.00 in benefits she received for these weeks.

DECISION:

The representative's February 11, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute a current act of work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 18, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending January 25, February 21 and 28, 2004. She has been overpaid a total of \$513.00 in benefits she received for these weeks.

dlw/b