

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SHIRLEY MUNFORD**  
Claimant

**APPEAL NO. 09A-UI-17893-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**Original Claim: 10-18-09  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 17, 2009, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 7, 2010. The claimant participated in the hearing. Kevin Mehaffy, Store Manager; Wendy Pearson, Personnel Manager; and Julie Bobvane, Assistant Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time stationary department manager for Wal-Mart from October 11, 1986 to October 21, 2009. The employer terminated a long-time friend and co-worker of the claimant October 21, 2009. The claimant was very upset about the situation and went to Personnel Manager Wendy Pearson's office and confronted her about why she fired her friend. She began yelling at her, asking how she could do that to a long-term employee who was such a good worker. Ms. Pearson told the claimant several times it was a management decision and she (Ms. Pearson) was just an hourly employee like the claimant. The claimant yelled, "How could you let that happen?" and Ms. Pearson continued to try to explain she did not make the decision but rather that it was a management decision. The claimant yelled that was why they needed a union and then she stated she "had a loaded over/under (shotgun) that could take care of things around here really quickly and (she) knew how to use it." She continued by saying, "Don't think there won't be retaliation." By this time Assistant Manager Julie Bobvane arrived in the office and both she and Ms. Pearson tried to calm the claimant; but after the claimant mentioned the shotgun and retaliation, Ms. Bobvane went to find Store Manager Kevin Mehaffy. After Mr. Mehaffy called the claimant to the office and she admitted saying she has an over/under and was afraid for Mr. Mehaffy, he called the police. As the police were escorting the claimant from the building she stopped by

Ms. Pearson's office and "thanked" Ms. Pearson for getting her fired and said she was "most fearful for Mr. Mehaffy" and he "needed to watch his back" and she was "scared for him." The employer terminated the claimant's employment for creating a hostile workplace and violating the employer's zero tolerance for violence in the workplace policy. The claimant testified it was a misunderstanding and she did not intend to threaten anyone.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant made threats in Ms. Pearson's office by saying she had a shotgun and knew how to use it and "could take care of things around here really quickly." She also stated "don't think there won't be retaliation" and that she was "most fearful for Mr. Mehaffy" and "he needed to watch his back" and that she was "scared for him." While the claimant denied that those comments were threats and testified she meant if she had a gun several other people probably had guns as well and if the employer continued to

terminate long-term employees violence might result, any reasonable person hearing her remarks at the time and place they were made would consider them threats against Mr. Mehaffy and Wal-Mart in general. In this day of workplace shootings, the employer had no choice but to take her remarks seriously and as threats when she made reference to her gun, retaliation, and being afraid for Mr. Mehaffy. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The November 17, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw