

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM WRIGHT
Claimant

APPEAL NO. 07A-UI-00014-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART SOTRES INC
Employer

OC: 12/03/06 R: 04
Claimant: Respondent (2)

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 December 21, 2006 decision (reference 01) that concluded Tim Wright (claimant) was qualified to receive unemployment insurance benefits, and 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 January 18, 2007. The claimant participated in the hearing. Christy Plumb, the store manager, and Brian Drechney appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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 April 3, 1998. The claimant worked as a full-time overnight stocker. The employer's policy informs employees that the employer expects all employees to be honest.

Prior to November 8, 2006, the claimant received a final written warning or had a decision day in early June 2006. The claimant's previous warnings were not similar to the November 8, 2006 incident. During a break on November 8, the claimant purchased some merchandise. He went through the employer's self-checkout. The claimant paid with a ten-dollar bill. The claimant received change back and put it into his pocket. After the claimant was home, he noticed he had more money than he should have. The claimant learned his wife did not put any money into his wallet. The claimant checked his receipts and did not find anything that he received too

much money in change when he paid for merchandise on November 8. The claimant had \$45.00 extra money.

After the employer learned the self-checkout register was short, the employer investigated the reason for the shortage. Based on the employer's security camera and computer, the employer determined the claimant received an extra \$45.00 in change that he was not entitled to receive. Other employees received too much back in change also from this self-check out lane. Instead of giving customers one-dollar bills, the register gave ten-dollar bills.

On November 29, Drechney talked to the claimant about the November 8 incident. On November 29, the claimant made a written statement that he had put \$10.00 in the self-check register. The claimant was supposed to have received \$5.00 in change, but instead received \$45.00. When the claimant realized the employer's register gave him back too much change, he did not say anything to anyone and did not return the money to the employer.

On November 30, 2006, the employer discharged the claimant because he received \$45.00 of the employer's money from a self-checkout register and did not say anything to the employer or return the money to the employer prior to November 29, 2006.

The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006. The claimant filed claims for the weeks ending December 9, 2006, through January 2007. The claimant received his maximum weekly benefit amount of \$238.00 each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 testimony at the hearing conflicts with his November 29 statements he made to Drechney. The claimant's November 29 written statement (Employer Exhibit One) and Drechney's testimony are deemed more credible than the claimant's January 18 testimony. This conclusion was made primarily because his assertion that he had no idea where he received an extra \$45.00 is not believable. The evidence indicates the claimant realized he received too much in change from the employer, but decided to keep the money because this monetary downfall was too good to be true.

The claimant's decision to keep the employer's money without saying anything to anyone amounts to an intentional and substantial disregard of the employer's interests. The claimant also disregarded the standard of behavior the employer had a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of December 3, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he 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 unemployment benefits for the weeks ending December 9 through January 13, 2007. The claimant has been overpaid \$1,428.00 in benefits he received for these weeks.

DECISION:

The representative's December 21, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 3, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending December 3, 2006, through January 13, 2007. The claimant has been overpaid and must repay a total of \$1,468.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw