

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

MICHELLE R REED
1931 FRANKLIN ST
WATERLOO IA 50703-5021

WAL-MART STORES INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-01460-CT
OC: 01/08/06 R: 03
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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 27, 2006, reference 01, which held that no disqualification would be imposed regarding Michelle Reed's separation from employment. After due notice was issued, a hearing was held by telephone on February 23, 2006. Ms. Reed participated personally. The employer participated by Liz Graeser, Co-Manager. Exhibits One through Ten were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Reed was employed by Wal-Mart from

September 17, 2002, until January 10, 2006. She was last employed full time as a stocker. She was discharged after she threatened a coworker on January 6.

Ms. Reed was apparently having some difficulty with two of her coworkers, Helen and Sandy. During the week leading up to January 6, she told Kevin, another coworker, that she intended to follow the two home and kick their asses after work. Kevin later asked Helen what she had done to make Ms. Reed angry at her and Sandy. On January 6, Ms. Reed told Kevin that she was going to kick his ass after work. Kevin was upset by the threat and, therefore, reported it to management.

On January 10, the employer met with Ms. Reed concerning the report made by Kevin. In the presence of Bryan Johnson, store manager, and Liz Graeser, Ms. Reed acknowledged that she had told Kevin she intended to follow him home and kick his butt. She indicated she was angry with Kevin and did not want him talking about her business anymore. After Ms. Reed acknowledged making the threat, she was notified of her discharge.

Ms. Reed has received a total of \$1,399.00 in job insurance benefits since filing her claim effective January 8, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Reed 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Reed was discharged for threatening a coworker, an allegation she denied. She could offer no plausible reason as to why Kevin would fabricate his statement that she threatened him. Although Kevin was not offered by the employer as a witness, Liz Graeser did provide first-hand testimony that Ms. Reed acknowledged to the employer that she had threatened Kevin. Ms. Reed did not provide any evidence to suggest that there was a conspiracy to get rid of her.

The employer had the right to expect a violence-free workplace. It is true that Ms. Reed did not threaten to assault anyone while on Wal-Mart's property. However, the threat had the effect of making Kevin upset and scared for his safety while at work. Ms. Reed knew or should have known that threatening a coworker was contrary to the standards the employer expected. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Reed has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 27, 2006, reference 01, is hereby reversed. Ms. Reed was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Reed has been overpaid \$1,399.00 in job insurance benefits.

cfc/kjw