

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY J STORBECK
Claimant

APPEAL NO. 08A-UI-00492-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12-16-07 R: 02
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 30, 2008. The claimant did participate. The employer did participate through Beth Fakler, Assistant Manager and (representative) Kristopher Watson, Co-Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a baker full time beginning April 13, 2006 through December 12, 2007 when she was discharged.

On December 12, 2007 one of the claimant's coworkers Lena Booth reported to Kristopher Watson that the claimant had again stolen food from the bakery/deli area where she was assigned to work.

Mr. Watson called Beth Fakler and the claimant into an office to discuss the matter. During the meeting the claimant admitted that she had taken food from the bakery/deli area and that she had not paid for it. She also admitted that she had taken food before without paying for it on several occasions. The claimant admitted she had stolen from the employer on more than one occasion and that she knew her behavior was wrong. The admissions, which claimant denied at hearing, were heard by both Mr. Watson and Ms. Fakler on December 12, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 administrative law judge is persuaded that on December 12, 2007, the claimant did steal food from her employer. The claimant was seen by a coworker, Lena Booth, committing the theft and admitted the same to both Mr. Watson and Ms. Fakler. The claimant also admitted that she had stolen on previous occasions and that she knew her conduct was wrong. The claimant's denials of the theft during the hearing represent her attempt to collect unemployment insurance benefits. The employer has established that the claimant committed theft from the employer which constitutes disqualifying misconduct. Benefits are denied.

DECISION:

The January 7, 2008, reference 01, decision is affirmed. 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs