

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M COOK**

Claimant

**APPEAL NO. 08A-UI-08418-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 08/10/08 R: 02  
Claimant: Respondent (2-R)**

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 September 12, 2008, reference 01, which held that no disqualification would be imposed regarding Dawn Cook's separation from employment. After due notice was issued, a hearing was held by telephone on October 6, 2008. Ms. Cook participated personally. The employer participated by Carol Mullihan, Asset Protection Coordinator.

**ISSUE:**

At issue in this matter is whether Ms. Cook was separated from employment for any disqualifying reason.

**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. Cook was employed by Wal-Mart from September 30, 2006 until August 6, 2008. She was employed full time as a cashier. She was discharged for giving discounts to a Subway employee without authorization and receiving free food in exchange.

A Subway sandwich shop rents space in the Wal-Mart building where Ms. Cook worked. Ms. Cook and one other cashier were giving discounts to a Subway employee by the name of Chad and receiving free sandwiches in return. They were giving the discounts under the guise of "price-matching." If a customer tells a cashier that he can obtain a certain item at a lower price from a direct competitor in the local community, the cashier is authorized to allow the customer to purchase the item at the same price for which he could purchase the item at the competitor's location. A Wal-Mart cashier cannot give a discount of more than \$3.00 per item without management approval. The employer learned on or about August 5, 2008 that Ms. Cook was giving discounts to the Subway employee in exchange for free food from Subway.

The employer discovered that Ms. Cook had rung eight transactions for Chad in which he received a discount. At least 20 items were discounted by more than \$3.00. The transactions occurred during the period from July 8 through July 18, 2008. The total retail value of the items purchased was \$127.95 but Chad only paid \$25.75. All of the items purchased were fishing equipment but none of the discounted prices were from local competitors of Wal-Mart. As a result of the above conduct, Ms. Cook was discharged on August 6, 2008.

Ms. Cook filed a claim for job insurance benefits effective August 10, 2008. She has received a total of \$1,458.00 in benefits since filing the claim.

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

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. Cook was discharged for giving unauthorized discounts in exchange for free food. Her actions amounted to theft as they deprived Wal-Mart of at least \$102.20 in revenue that it would have received if the items had been sold at regular retail price. The administrative law judge does not believe Ms. Cook had been given the authority to allow unlimited discounts based solely on the word of a customer. She told the employer at the time of discharge that she was aware there was a \$3.00 limit on the extent to which she could discount an item when price-matching.

Ms. Cook's conduct in giving discounts in exchange for free food was clearly contrary to the employer's standards and interest as it reduced the employer's profits. For the reasons cited herein, it is concluded that the employer has satisfied its burden of proving substantial misconduct. Accordingly, benefits are denied.

Ms. Cook has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Cook will be required to repay benefits already received.

#### **DECISION:**

The representative's decision dated September 12, 2008, reference 01, is hereby reversed. Ms. Cook was discharged for misconduct in connection with her employment with Wal-Mart. 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. This matter is remanded to Claims to determine if Ms. Cook will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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