

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMEL D SCOTT
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 14A-UI-06590-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/25/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated June 11, 2014 (reference 01) which held that Ms. Jamel Scott (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2014. The claimant participated in the hearing. The employer participated through Peggy Wagner, Asset Protection Manager, and Elena Rocha, Shift Manager. Employer's Exhibit One was admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment, and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time electronics sales associate and was employed from May 21, 2013 through May 16, 2014 when she was discharged for a policy violation that occurred on March 13, 2014. The employer's policy prohibits employees from ringing out a family member's purchases at the cash register. The claimant was trained on this policy but denies knowledge of it. She rang up her mother and sisters' purchases on March 13, 2014 even though coemployee Marissa Ruiz told her not to do so.

The employer had to conduct an automatic audit of the transaction and ran a training receipt of the same items on April 3, 2014. The employer discovered that the claimant undercharged her family members \$97.33. The claimant's family members paid a total amount of \$114.73 for their purchases but the training receipt showed the items actually rang up for \$212.06 which was the amount her family should have paid for the items.

The delay in termination occurred because the employer had to investigate further to determine whether there were any other similar transactions. Additionally, the employer has limited asset protection employees who can interview employees and the local asset protection manager had to wait on that person before the termination could occur.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 16, 2014 for violations of policy on March 13, 2014. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated June 11, 2014 (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can