

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTY D INGRAM
Claimant

APPEAL NO: 13A-UI-04306-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 03/17/13
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 1, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Tom Kuiper represented the employer. Cindy King, the asset protection manager, testified 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 concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2010. He worked full-time as an express greeter in the tire and lube department. Part of the claimant's job required him to make sure customers paid for merchandise before leaving the store.

Sometime before late November 2012, an old female friend talked to the claimant about letting her take merchandise from the employer without paying for it. The claimant told her he would do this if she had sex with him. (Employer Exhibit One.) On November 27 and 28, this woman's cousin had a cartful of merchandise and the claimant allowed this man to leave the employer's store without paying for any of the merchandise. The man had a crumbled receipt from another store. After the claimant allowed this man to leave the store without paying for merchandise, did the same thing the next day.

On December 18, 2012, a local law enforcement official contacted King and reported the late November incidents. Law enforcement officials had investigated the woman and her cousin. They told law enforcement officials the claimant had allowed the man to leave the employer's store without paying for merchandise. King then reviewed video tape of the shifts that the claimant worked. The video tape confirmed the incidents took place on November 27 and 28.

On January 2, 2013, the employer talked to the claimant. During this conversation, he admitted he had talked to the woman about allowing her or her relative to take merchandise from the employer's store without paying for it. After the claimant acknowledged his involvement in these incidents, the employer discharged him on January 2, 2013, for conduct unbecoming an employee. The claimant was charged and pled guilty to second degree theft.

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. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

During the hearing, the claimant asserted he did not realize the merchandise pushed out of the store by an old friend's relative had not been paid for is not credible. The claimant's testimony is not credible because he has already pled guilty to second degree theft and made a written statement on January 2, 2013, that acknowledged his part of the theft. (Employer Exhibit One.) Even if the claimant jokingly told a friend he would participate in the theft if she had sex with him, the claimant knew when the cartful of merchandise was pushed out on November 27 and 28 that the merchandise had not been paid for. On November 27 and 28, the claimant deliberately disregarded the standard of conduct the employer had a right to expect from him. He committed work-connected misconduct. As of March 17, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 1, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 17, 2013. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll