

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA M BOLEN
Claimant

APPEAL NO. 08A-UI-03113-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/02/08 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Debra Bolen filed an appeal from a representative's decision dated March 26, 2008, reference 01, which denied benefits based upon her separation from Wal-Mart Stores. After due notice was issued, a hearing was held by telephone on April 30, 2008. Ms. Bolen participated personally. Participating as a witness was Stephanie Jackson. The employer participated by John Straka, assistant manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for this employer from March 2003 until March 4, 2008, when she was discharged from employment. Ms. Bolen held the position of full-time deli sales associate and was paid by the hour. Her immediate supervisor was John Straka.

The claimant was discharged after it was determined that she had falsified company cooking records on Sunday, March 2, 2008. Mr. Straka personally observed at 10:00 a.m. that cooking logs for 2:00 p.m. that day had been filled out and initialed by Ms. Bolen in violation of company policy. Company policy specifically requires cooking times and temperatures to be recorded on logs at the time that the events are occurring. Employees are provided training and must pass an examination to demonstrate their ability to perform their duties with respect to entering log information. At the time of discharge, the claimant did not deny her actions or indicate that the initials were not hers.

It is the claimant's position that although she knew it was a violation of company policy, other individuals engaged in the practice and that, therefore, the claimant also did so.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant. It has.

The evidence in the record clearly establishes that employees were fully aware of the employer's expectations with respect to correctly entering log information regarding cooking and temperatures of foods being prepared in the company deli. The claimant had taken training and had demonstrated her proficiency in entering log entries. The claimant and other employees had been reminded on a regular basis by Mr. Straka of the importance of correctly entering information in a timely manner. After being confronted with respect to falsification on Sunday, March 2, 2008, the claimant did not dispute the employer's allegations, although she was given an opportunity to do so.

Iowa Code section 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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 26, 2008, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw