

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MELANIE W WALKER  
201 N 2<sup>ND</sup> AVE APT 34  
MARSHALLTOWN IA 50158

WAL-MART STORES INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-03851-DWT  
OC: 02/13/05 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's March 28, 2005 decision (reference 01) that concluded Melanie W. Walker (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2005. The claimant participated in the hearing. Angela Hansen, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 1, 2003. The claimant worked as a full-time cashier. Hansen was the claimant's supervisor.

When cashiers need change the employer's policy requires the cashier to input the amount of change needed in the computerized register. This then triggers a signal to another employee who is supposed to bring the needed money to the register. The cashier who needs the money either has to open the drawer to pay for the change received or the cashier previously put the money in the cash bag that was zipped and put under the cash register. Whenever the employer sees employees putting money for change into the pocket of a uniform, the employer talks to the employee about failing to follow the employer's procedure. The employer talked to the claimant about the proper way to get needed cash. The claimant sometimes put money into her uniform and then went to the employee to get the change she needed. When the claimant obtained cash in this way, she violated the employer's procedure. The claimant believed her method was quicker.

Shortly prior to February 15, 2005, the claimant's cash register drawer was \$100.00 short. In attempting to discover why the claimant's drawer was short, Hansen reviewed the videotape the employer has for security purposes. On February 15, Hansen observed the claimant put money into the pocket of her uniform on the day she was \$100.00 short. The videotape revealed the claimant stayed at her register for a lengthy period of time and no one came with any change.

On February 15, the employer talked to the claimant about the videotape. During this discussion the claimant admitted she put \$100.00 in the pocket of her uniform. The claimant also signed a statement that she would repay the employer \$100.00. The employer discharged the claimant on February 15, 2005, for being dishonest and taking the employer's money.

The claimant established a claim for unemployment insurance benefits during the week of February 13, 2005. The claimant filed claims for the weeks ending March 26 through April 23, 2005. The claimant received \$1,100.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

A preponderance of the evidence establishes the claimant was responsible for a \$100.00 shortage sometime prior to February 15, 2005. The claimant admitted she put \$100.00 in the pocket of her uniform. There is no evidence the claimant gave another employee this \$100.00 in exchange for change for her cash register. Even though the claimant denied she took any money on February 15, the claimant signed a statement that she would repay the employer \$100.00. The facts indicate the claimant intentionally and substantially disregarded the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of February 13, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending March 26 through April 26, 2005. The claimant has been overpaid a total of \$1,100.00 in benefits she received for these weeks.

#### DECISION:

The representative's March 28, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending March 26 through April 23, 2005. The claimant has been overpaid and must repay \$1,100.00 in benefits she received for these weeks.

dlw/kjf