

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

LLOYD H DARROW  
205 – 15<sup>TH</sup> ST  
DES MOINES IA 50309-3405

WAL-MART STORES INC  
C/o TALX UC EXPRESS  
P O BOX 283  
ST LOUIS MO 63166-0283

LLOYD H DARROW  
309 W BOONE ST  
MARSHALLTOWN IA 50158-2734

Appeal Number: 06A-UI-04745-RT  
OC: 04/02/06 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 for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated April 24, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Lloyd H. Darrow. After due notice was issued, a telephone hearing was held on May 17, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Saturnino Reyes, Co-manager of the employer's store in Marshalltown, Iowa, and Jode Jensen, Market Asset Protection Manager, participated in the hearing for the employer. Employer's Exhibits One

through Four were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Four, the administrative law judge finds: The claimant was employed by the employer as a full-time courtesy associate from August 16, 2005, until he was discharged on March 2, 2006. The claimant was discharged for theft. The claimant took two gift cards from a shopping cart left in the parking lot from a customer who had forgotten the gift cards in the shopping cart. Each gift card was valued at \$20.00 each. The claimant also took pop bottles from the break room and cashed them in. The claimant also took cigarettes belonging to others from the break room. When the claimant used the gift card at the store he was caught and an investigation was conducted. The investigation revealed that the claimant did take the gift cards, the pop bottles, and the cigarettes. The claimant admitted to such acts as shown at Employer's Exhibit One and signed an exit interview to that extent at Employer's Exhibit Three and also a restitution note at Employer's Exhibit Four. The employer has integrity policies and training, therefore, and the claimant received such training as shown at Employer's Exhibit Two. Pursuant to his claim for unemployment insurance benefits filed effective April 2, 2006, the claimant has received no unemployment insurance benefits. Records show no weekly claims and no payments made to the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not because the claimant has received no such benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witness, Saturnino Reyes, Co-manager of the employer's store in Marshalltown, Iowa, credibly testified, and the administrative law judge concludes, that the claimant was discharged on March 2, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Mr. Reyes credibly testified that the claimant took two gift cards, valued at \$20.00 each, from the shopping cart left in the parking lot by a customer who had forgotten the gift cards. The claimant also took pop bottles from the break room and cashed them in for cash. The claimant also took cigarettes belonging to others from the break room. The claimant signed an admission to this behavior as shown at Employer's Exhibit One and an exit interview to that effect at Employer's Exhibit Three and a restitution note as shown at Employer's Exhibit Four. The employer has integrity policies for which the claimant received training as shown at Employer's Exhibit Two. There is no evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant did steal the items as noted above and that these actions were deliberate acts constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation

trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about March 2, 2006 and filing for such benefits effective April 2, 2006. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

**DECISION:**

The representative's decision of April 24, 2006, reference 01, is reversed. The claimant, Lloyd H. Darrow, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. Since the claimant has received no unemployment insurance benefits he is not overpaid such benefits.

cs/pjs