

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTORIA MAH**  
Claimant

**APPEAL NO. 07A-UI-00013-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/03/06 R: 02**  
**Claimant: Respondent (2)**

Section 96.-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 December 21, 2006 decision (reference 01) that concluded Victoria Mah (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 February 19, 2007. An interpreter was present at the hearing. The claimant was not available for the hearing. Although a message was left on the claimant's answering machine, she did not contact the Appeals Section again to participate in the hearing. Frank Page, a co-manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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:**

On September 12, 2006, the employer hired the claimant to work full-time in the deli department. The claimant's job required her to prep, cook and wait on customers.

In early November 2006, the employer talked to the claimant after she became upset with a co-worker. The employer considered this a minor problem at the time. In late November, the claimant again became upset with co-workers. Instead of taking a problem or a concern to manager, the claimant yelled at co-workers when she disagreed with a co-worker. The employer told the claimant she could not yell at her co-workers and she had to report problems to management instead of trying to take care of the problem by yelling at employees.

On December 2, the claimant was assigned to work at the front counter. The claimant did not like working at the front counter. She wanted to cook. After working at the front counter for a while, a co-worker asked the claimant to wait on a customer at the deli counter. The claimant replied that she was not going to wait on the customer and yelled at her co-workers that she was tired of working at the front counter. When the employer talked to the claimant about the yelling incident she had just been engaged in, the claimant told the employer she was upset because she believed she was being left at the front counter without anyone helping her. The employer discharged the claimant on December 2 for yelling at a customer and at her co-workers.

The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006. The claimant filed claims for the weeks ending December 9 through 23, 2006. The claimant received her maximum weekly benefit amount of \$313.00 for each of 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).

The claimant knew or should have known she could not yell at customers or co-workers at work when she became upset with them or disagreed with any of their instructions. The claimant's conduct on December 2 after the employer talked to her about yelling at co-workers and her refusal to help a customer when she had been assigned to the front counter amounts to an intentional and substantial disregard of the employer's interests and of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of December 3, 2006, 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 for the weeks ending December 9 through 23, 2006. The claimant has been overpaid \$939.99 in benefits she received for these weeks.

#### **DECISION:**

The representative's December 21, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 3, 2006. 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 benefits for the weeks ending December 9 through 23, 2006. The claimant has been overpaid and must repay a total of \$939.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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