

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

SUSAN L PALMER
14 N 11TH AVE APT 1
MARSHALLTOWN IA 50158

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

Appeal Number: 05A-UI-06058-JTT
OC: 05/22/05 R: 02
Claimant: Respondent (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart filed a timely appeal from the June 8, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 21, 2005. Susan Palmer participated in the hearing initially, but the telephone connection was terminated before Ms. Palmer was provided the opportunity to testify. Ms. Palmer did contact the administrative law judge after the record was closed and elected not to request that the record be re-opened. Wal-Mart participated in the hearing through Angela Hansen, Assistant Manager. Exhibits One through Eight were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Palmer was employed by Wal-Mart as a full-time overnight cashier from May 18, 2004 until

May 21, 2005, when Assistant Manager Angela Hansen discharged her for misconduct based on cash register errors. There was no other basis for the discharge.

The final incident that prompted the discharge occurred on April 16, 2005 and came to Wal-Mart's attention on or about May 21, 2005. On April 16, 2005, Ms. Palmer made an error in a transaction involving redemption of a WIC Voucher. Ms. Hansen's error was that she allowed the customer to redeem the voucher for two cartons of eggs instead of the one carton of eggs authorized by the voucher. The retail value of the extra dozen eggs was 62 cents. The error came to Wal-Mart's attention when the Iowa WIC program refused to reimburse Wal-Mart for the additional carton of eggs. Ms. Hansen made no errors regarding the several additional items that were included on the WIC Voucher and were part of the same transaction.

On March 30, 2005, Ms. Palmer made an in processing another WIC Voucher. In connection with that transaction, Ms. Palmer allowed the customer to substitute items not authorized by the voucher for the items authorized by the voucher. Ms. Palmer's error in connection with this transaction resulted in a \$36.38 loss to Wal-Mart. As a result of that error and loss, Wal-Mart issued a written reprimand to Ms. Palmer and provided her with a "decision day" to consider her work performance and her future with Wal-Mart. Before returning to work after the decision day, Ms. Palmer agreed to be more careful during cash register transactions. On December 19, 2004, Wal-Mart had issued a written reprimand to Ms. Palmer for cash register shortages totaling more than \$300.00 over the course of six months. The need for Ms. Palmer to be more accurate in handling cash register transactions was referenced in her annual evaluation dated April 4, 2005.

The processing of WIC Vouchers was one of many topics addressed in the training Ms. Palmer received as a Wal-Mart cashier. It is not clear how much time was actually spent on training specific to processing the WIC Vouchers. Wal-Mart's written procedure for processing WIC Vouchers is set forth on Wal-Mart's internal computer system and can be accessed by employees. It is not clear that Ms. Palmer was aware of the written procedure or how to access it.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Palmer was discharged for misconduct in connection with her employment.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Wal-Mart does not allege intentional misconduct on the part of Ms. Palmer and the evidence in the record would not support such an allegation. Instead, Wal-Mart argues that Ms. Palmer's recurrent negligence and/or carelessness amounted to misconduct. Ms. Palmer's error with regard to the transaction on April 16, 2005 was fairly insignificant in the context of the entire transaction, appears to have been an error that would be easily made, and resulted in minimal loss to Wal-Mart. The error regarding the transaction on March 30, 2005, is more significant, but appears to have resulted from insufficient training in the processing of WIC Vouchers. The allegation that Ms. Palmer's handling of transactions over the course of a six-month period resulted in a loss of \$300.00 or more to Wal-Mart was not substantiated by the employer and would not necessarily represent negligence and/or carelessness rising to the level of misconduct if it had been substantiated. The evidence in the record fails to establish that the errors Ms. Palmer made as an overnight Wal-Mart cashier evidenced a deliberate disregard of the interests of the employer. Based on the evidence in the record and the applicable law, the administrative law judge concludes that Ms. Palmer was discharged for no disqualifying reason. Accordingly, benefits are allowed, provided Ms. Palmer is otherwise eligible.

DECISION:

The Agency representative's decision dated June 8, 2005, reference 01, is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/sc