

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS P BECKER
Claimant

APPEAL NO. 10A-UI-03602-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 01/31/10
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated February 23, 2010, reference 01, which held that no disqualification would be imposed regarding Thomas Becker's separation from employment. After due notice was issued, a hearing was held by telephone on April 22, 2010. Mr. Becker participated personally. The employer participated by Cynthia King, Asset Protection Coordinator. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Becker was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Becker was employed by Wal-Mart from February 5, 2008 until January 29, 2010. He was last employed full-time as an associate in the electronics department. He was discharged due to dishonesty.

In November of 2009, Mr. Becker began dating Felicia, an associate in asset protection. The two began living together in December. The employer has a written policy, of which Mr. Becker was aware, that prohibits a romantic relationship between two associates if one supervises or can influence the terms of the employment of the other. Mr. Becker and Felicia did not disclose their relationship to others at Wal-Mart but were aware there were rumors of a romantic involvement.

The employer met with Mr. Becker on January 24 and questioned him about his relationship with Felicia. He indicated the two were just friends. He was asked three times whether there was a romantic relationship and he denied there was one on all three occasions. He was allowed to leave the meeting. Approximately 20 minutes later, he was called back and again questioned about the relationship. At this point, he acknowledged that the two were romantically involved. He told the employer that he initially lied because he did not want to get into trouble. As a result of his dishonesty, Mr. Becker was discharged on January 29, 2010.

Mr. Becker filed a claim for job insurance benefits effective January 31, 2010. He has received a total of \$467.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Becker was discharged due to dishonesty. He acknowledged that he lied to the employer when initially questioned about his relationship with Felicia. During the initial interview, he had two opportunities to correct his false statement. Although he initially denied a romantic relationship, he could have changed his answer when asked about it a second and then a third time. Instead, he left the initial meeting with the employer still under the impression that he and Felicia were just friends.

Mr. Becker owed his employer the duty of honesty, especially on matters material to his employment. He was dishonest in the first place in deliberately failing to disclose a relationship he knew might constitute a violation of the employer's policy. He compounded his dishonesty when he lied to the employer about the relationship three times on January 24. As an asset protection associate, Felicia was in a position to effect the terms of his employment in the event she was called upon to investigate irregularities in his department. Mr. Becker's dishonesty had the potential of undermining the employer's efforts to maintain the integrity of its operations. His dishonesty was clearly contrary to the type of behavior an employer has the right to expect and is, therefore, misconduct within the meaning of the law. As such, benefits are denied.

Mr. Becker has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated February 23, 2010, reference 01, is hereby reversed. Mr. Becker was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Becker will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw