

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAXINE K CRONK
Claimant

APPEAL NO. 11A-UI-01934-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/19/10
Claimant: Appellant (1)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 14, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 16, 2011. Claimant participated. Employer participated by Carol McCaslin, Asset Protection Coordinator. The record consists of the testimony of Carol McCaslin and the testimony of Maxine Cronk.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a full-time fitting room associate at the employer's store located in Altoona, Iowa. The claimant's date of hire was April 20, 2000. The claimant's last day of work was December 20, 2010. The claimant was terminated on December 20, 2010, for theft of company property. The employer has a zero tolerance for theft of its property and an employee is immediately terminated for theft. This policy was in writing and known by the claimant.

On December 15, 2010, an associate reported to the employer that the claimant was not paying for her newspaper. The claimant's practice was to come to work and pick up a newspaper from the stack in the front. She would then purchase other items she would need during the day. Carol McCaslin proceeded to review surveillance tapes. The tapes showed that the claimant paid for her paper on four days but did not pay for her paper on 39 days. The value of the papers was \$30.00. Ms. McCaslin interviewed the claimant and the claimant said that she may have forgotten about the paper. She signed a restitution note in lieu of charges and was terminated.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by an employee to an employer is honesty. An employer can reasonably expect that an employee will not misappropriate the employer's property. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant had a habit of picking up a newspaper at the start of her shift. She would then purchase other items she might need. In some cases she just picked up the paper. Surveillance footage showed that the claimant did pay for her paper on four occasions but she did not pay for the paper on 39 other occasions. Although the claimant might reasonably claim she forgot on one or two occasions, this assertion is not credible given the fact that the claimant did not pay for the paper 39 times. The administrative law judge concludes that the claimant's actions were deliberate, not accidental, and that misconduct has been established. Benefits are denied.

DECISION:

The decision of the representative dated February 14, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css