

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

PAMELA K SOLBERG  
539 – 19<sup>TH</sup> ST SE  
MASON CITY IA 50401

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

Appeal Number: 05A-UI-00082-DWT  
OC: 11/14/04 R: 02  
Claimant: Appellant (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, 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

STATEMENT OF THE CASE:

Pamela K. Solberg (claimant) appealed a representative's December 22, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2005. The claimant participated in the hearing with her witness, Kim Loggins. Derrick Orr, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 5, 2004. The employer hired the claimant to work as a part-time sales associate in the Health and Beauty Department. The employer's sales associate job description informs employees they may be assigned to other jobs as needed. The claimant did not understand the employer would ever ask her to work as a cashier.

In late September or early October, an employee asked the claimant to work as a cashier for a while. The claimant told the employee she would not work as a cashier because she had not received any training. The claimant also told the store manager she would not work as a cashier.

The store manager contacted the corporate office about the claimant's refusal to work as a cashier. On October 10, the employer again asked the claimant if she would work as a cashier. The employer wanted the claimant to fill-in or work as a cashier as the employer's business needed extra cashiers. The employer anticipated the claimant would be working 15 to 20 minutes as a cashier only when the employer needed extra cashiers. When the claimant again refused, the employer asked if she needed training. The claimant indicated her refusal to work as a cashier was not a training issue. Instead, the claimant refused to do cashier work because the employer had hired her to work as a sales associate, not a cashier.

Although the claimant did not say anything to the employer, she did not believe it was fair for the employer to assign her to work as a cashier when employees hired as cashiers earned more money than she earned. The claimant also refused to work as a cashier because she experiences anxiety attacks and concluded she would suffer such an attack if she had to work as a cashier with 20 or more people waiting to be checked out. The claimant did not provide the employer with any work restrictions. On October 10, 2004, the employer discharged the claimant for refusing to work as a cashier or at least trying to work as a cashier for short periods of time.

Another employee, Loggins, also refused to work as a cashier. When the employer offered her another job, she declined. The claimant was upset when the employer did not offer her another job like Loggins had been offered.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The employer discharged the claimant.

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 employer's request that the claimant learn how to work a cash register was not unreasonable. The evidence does not establish that the employer planned to have the claimant work as a cashier on a long-term basis. The employer wanted flexibility so if the employer was so busy other cashiers were needed; the claimant would be able to work as a cashier on a temporary basis.

If the claimant had a medical condition the employer needed to accommodate, the claimant did not inform the employer of this fact and did not provide any medical documentation verifying she needed any accommodations or had any work restrictions. One of the primary reasons the claimant refused to do any work as a cashier was because cashiers received a higher hourly wage than the claimant. Even though the claimant had reasons she would not work as a cashier, she declined to inform the employer about these reasons. The claimant refused to perform job duties that were reasonable. Under the facts of this case, the employer discharged the claimant for intentionally failing to perform some of her job duties. The claimant committed work-connected misconduct. As of November 14, the claimant is not qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's December 22, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 14, 2004. 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.

dlw/pjs