

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID V STEWART**  
Claimant

**APPEAL NO. 08A-UI-04859-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 04/27/08 R: 04**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

David V. Stewart (claimant) appealed a representative's May 19, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2008. The claimant participated in the hearing. Jerry Driskell 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 15, 2004. He worked full time as a cashier at the employer's Davenport, Iowa, store. His last day of work was April 24, 2008. The employer discharged him on that date. The reason asserted for the discharge was an issue regarding integrity and usage of profanity.

On April 19, the claimant had come into the store shortly before the start of his shift at 2:00 p.m. He picked up a beverage and/or a food item and went to a self-checkout register. He paid for the items and then picked up some change that was in the change dispense tray. He then went back to the break room and consumed his items, then began his shift.

Another clerk had noticed that the last customer prior to the claimant had left a \$20.00 bill in the change dispense tray. When the claimant took the change from the tray, he took the \$20.00 bill as well and put it into his wallet. He did not turn it in or report it to management. The other clerk who had noticed reported the matter to management. The claimant was confronted on the issue on April 24. When confronted, the claimant acknowledged that he had subsequently realized that he had picked up and put in his wallet more money than he thought he would have. He denied that he realized prior to or at the time he picked up the money that there was money in the dispense tray which was from some other transaction.

The person speaking to the claimant on April 24 accused the claimant of stealing the money and made threats to the claimant of imprisonment. The claimant became upset and did raise his voice in response. Mr. Driskell, a co manager of the store, was not present in the meeting, but understood that the claimant had used some profanity, although he was not aware of what supposed profanity the claimant might have used. The claimant denied using any profanity. After the claimant became upset, the person handling the meeting told the claimant he was discharged.

## **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his alleged misappropriation of the money from the change dispensement tray and his alleged usage of profanity upon being confronted. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant either knowingly took money which was not his or that he used profanity when confronted. Under the circumstances of this case, the claimant's failure to realize he was taking additional monies or to subsequently realize what had happened so he could turn it in was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 19, 2008 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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