

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C BURGETT
Claimant

APPEAL NO. 09A-UI-00412-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/02/08 R: 02
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 January 2, 2009, reference 01, which held that no disqualification would be imposed regarding Thomas Burgett's separation from employment. After due notice was issued, a hearing was held by telephone on January 27, 2009. The employer participated by Karen Wisneski, Assistant Manager. Exhibits One through Five were admitted on the employer's behalf. Mr. Burgett submitted a written letter, admitted as Exhibit A, in lieu of participating.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Burgett was employed by Wal-Mart from June 21, 2001 until October 28, 2008 as a full-time greeter. During the early morning hours of October 23, 2008, he was having a conversation with the store's security guard. He told the guard that, if he had a gun, he would shoot all the associates in the store. Mr. Burgett was asked to write a statement concerning the conversation, which he did. He indicated in his statement that he was joking with the guard. He also acknowledged in his statement that the comment should not have been made.

The comment the guard attributed to Mr. Burgett was considered a threat and, as such, a violation of the employer's workplace violence policy. Therefore, the decision was made to terminate his employment. Mr. Burgett signed the exit interview form that indicated he was being discharged for making a threat against management and associates. The above matter was the sole reason for the discharge.

Mr. Burgett filed a claim for job insurance benefits effective November 2, 2008. He has received a total of \$3,794.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Burgett was discharged by Wal-Mart. 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. Burgett was discharged for making a threatening comment in violation of the employer's workplace violence policy.

Mr. Burgett contended in his written submission (Exhibit A) that he did not make any threatening comment. It was his contention that he was merely repeating to the guard what an angry customer had said. This contention is contrary to the written statement he provided to the employer. Instead of writing that he was repeating someone else's comment, Mr. Burgett wrote that he was joking with the guard and that the comment should not have been made.

An employer has a vested interest in maintaining a violence-free workplace. Any threat or perceived threat of violence compromises the employer's ability to make sure there is no violence at the work site. An employer cannot assume an individual is joking. Moreover, the issue is not so much whether a threat of harm was intended but whether making the threat constituted a disregard of the employer's standards. An employer has to expend time and energy in investigating threats. A threat, whether intended or not, has the potential of causing others to become fearful of reporting to work.

Given the prevalence of workplace violence, the administrative law judge concludes that even threats of harm intended as a joke constitute a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and Mr. Burgett is disqualified from receiving benefits.

Mr. Burgett has received job insurance benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an 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. Benefits 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 Mr. Burgett will be required to repay benefits already received.

DECISION:

The representative's decision dated January 2, 2009, reference 01, is hereby reversed. Mr. Burgett was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Mr. Burgett will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw