

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KODY M FRANCK**  
Claimant

**APPEAL NO. 10A-UI-15815-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 10-10-10  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 8, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 4, 2011. The claimant did participate. The employer did not participate.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an unloader, part-time, beginning July 12, 2009, through October 10, 2010, when he was discharged. On October 10 the claimant was on his break in the parking lot of the store visiting with his mother when the two of them found a Wal-Mart sack in a grocery cart that had been forgotten by a customer. Inside the bag were gift cards and photographs. The claimant told his mother that he would take the sack back into the store because the customer would probably return to the store looking for the merchandise once they realized they forgot it. The claimant's mother would not give him the sack but instead left with the merchandise. The claimant admitted that if it had been any other person other than his mother, he would have reported her actions to store management. The claimant said nothing to store management. Later, the employer learned what had occurred and discharged the claimant for his failure to report his mother taking property that did not belong to her. The claimant's mother returned the merchandise to the store, including the gift cards after she was contacted by the police.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant admitted that he would have turned in any other person he saw take merchandise that did not belong to them. While the claimant's mother put him in a horrible position by taking merchandise that did not belong to her in front of her son, the claimant was obligated to report that conduct to his employer to prevent theft of merchandise that rightfully belonged to another. His failure to make the report is misconduct sufficient to disqualify him from receipt of unemployment insurance benefits.

**DECISION:**

The November 8, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw