

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD C SIMMONS
Claimant

APPEAL NO: 15A-UI-07646-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/07/15

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Edward C. Simmons (employer) appealed a representative's June 24, 2015, decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 3, 2015. The claimant participated in the hearing. John Finkeldei 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?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2011. He transferred from a store in Davenport, Iowa to a store in Maquoketa, Iowa and then as of July 28, 2014 worked full-time as an assistant manager at the Maquoketa store. His last day of work was June 4, 2015. The employer discharged him on that date. The stated reason for the discharge was not receiving proper approval to issue a loan to himself.

Back in about August 2014 the claimant's pay had been behind and the then store manager had authorized the store's accounting associate to issue the claimant an advance on his paycheck, which was then repaid when the proper paycheck came through. On April 28, 2015 the

claimant felt he needed \$50.00 for transportation costs and so directed the accounting associate to issue him a \$50.00 payroll advance; the claimant initialed the sheet indicating that he would pay it back out of the next payroll, but he did not get approval from the store manager. Additionally, he did not pay it back out of the next payroll, or either of the following two payrolls.

On May 20 the claimant again felt he needed \$25.00, and again directed the accounting associate to issue him a \$25.00 payroll advance. He again did not pay this advance back out of the next payroll. After this second occurrence, the accounting associate felt uncomfortable about the transactions and reported it to the current store manager, Finkeldei. He reported the matter to the asset protection department, which conducted a further investigation. As a result of these two improper transactions, the claimant was discharged on June 4.

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); Iowa Code § 96.5-2-a.

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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Even if the claimant was not aware of the exact policy provision, his prior experience with an advance had been with the knowledge and approval of the store manager, and he reasonably should have known that higher approval was expected. The claimant's causing of payroll advances to himself without authorization by the store manager, nor notification to the store manager particularly after not repaying the advance during the time indicated, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 24, 2015 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 4, 2015. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/mak