

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

ALESHA A COGDILL  
1141 150<sup>TH</sup> ST  
CHARTER OAK IA 51539

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

Appeal Number: 06A-UI-01135-RT  
OC: 01-01-06 R: 01  
Claimant: Respondent (2)

**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 for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated January 19, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Alesha A. Cogdill. After due notice was issued, a telephone hearing was held on March 6, 2006, with the claimant participating. Rick Hajek, Store Manager of the employer's store in Denison, Iowa, where the claimant was employed, participated in the hearing for the employer. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

## FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time cashier becoming a customer service associate in her last two months, from late February or early March of 2004 until she was discharged on December 28, 2005. The claimant was discharged for poor attendance and rude treatment of customers.

Concerning the claimant's attendance, the claimant's absences and tardies appear at Employer's Exhibit One. The absences marked as sick were because the claimant was ill and these were properly reported. However, the claimant had two absences for "other" on May 7, 2005 and July 2, 2005. The claimant did not know why she was absent on those two days. The claimant was also absent as a no-call/no-show on September 2, 2005. The claimant did not properly report this absence. In addition the claimant had five tardies one of which was for a doctor's appointment and the others for which the claimant was not aware. The claimant received two written warnings, called coachings for improvement, as shown at Employer's Exhibit Two, both for attendance.

Concerning rudeness to customers, on December 28, 2005, a customer came in with items to be returned and for which the customer had a gift receipt. A gift receipt is a receipt given from the store to the purchaser who then gives the gift receipt to the recipient of the gift so that the gift recipient can exchange the gift for the proper price if necessary. The actual price of the item is not shown on the gift receipt but the gift receipt can be scanned to show the actual price paid for the item. The first item was a holiday gift set which was for a lower price then the customer said was paid for the item. This item had been recently marked down. The claimant did not scan the gift receipt to determine the price. The second item was for a wallet. The claimant's mother who also worked for the employer had to come over and help the claimant return the two items for the full price paid for the items. The claimant remarked to the customer "wouldn't it be funny if that item (the wallet) didn't ring up for the right price either." The claimant's statement was confirmed by her mother. That item did ring up for the right price. The customer was unhappy with the claimant and the claimant was discharged. This incident occurred just one day after an incident on December 27, 2005 when the claimant got into an argument with the store manager, Rick Hajek, the employer's witness. Mr. Hajek was helping at the sport's counter when a customer attempted to return ammunition. The employer generally does not allow returns of ammunition and has signs posted to that effect. However, the store manager can override that policy and allow returns of ammunition. After visiting with the customer Mr. Hajek determined to override the system and allow the return of the ammunition. He accompanied the customer to the customer service desk but the claimant refused to accept the ammunition. Mr. Hajek told the claimant it was OK but the claimant again refused. Mr. Hajek explained a second time that it was OK but the claimant again refused and began arguing with Mr. Hajek in the presence of the customer. Finally the claimant relented and allowed a return of the ammunition. For this the claimant was given an oral warning at that time. The claimant was also the subject of two other customer complaints.

Pursuant to her claim for unemployment insurance benefits filed effective January 1, 2006, the claimant has received unemployment insurance benefits in the amount of \$372.00 as follows: \$124.00 per week for three weeks from benefit week ending January 7, 2006 to benefit week ending January 21, 2006.

## REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

Iowa Code section 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, (7) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

- (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The parties agree, and the administrative law judge concludes, that the claimant was discharged on December 28, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for

disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Rick Hajek, Store Manager of the employer's store in Denison, Iowa, where the claimant was employed, credibly testified that the claimant was discharged for two reasons poor attendance and rudeness to customers.

Concerning the claimant's attendance, the claimant's absences and tardies are set out on Employer's Exhibit One. In addition to the absences for sickness the claimant had two absences for "other" reasons but she could not remember why. The claimant also had one absence as a no-call/no-show. The claimant testified that she did not have a phone for the absence as a no-call/no-show but this is not credible to the administrative law judge since the claimant was able to report all of her other absences. The claimant also had five tardies. One tardy was for a doctor's appointment but the claimant did not know why she was tardy on the four other occasions. The claimant received two written warnings for her attendance as shown at Employer's Exhibit Two. On the record here, the administrative law judge is constrained to conclude that the claimant's two absences noted as "other" and the absence as a no-call/no-show and the four tardies were not for reasonable cause or personal illness and/or were not properly reported and are excessive unexcused absenteeism and disqualifying misconduct.

Concerning the rudeness to customers, the evidence establishes that on two occasions in two consecutive days the claimant was rude to customers. On the first occasion, December 27, 2005, the claimant refused to accept the return of ammunition despite the store manager's instructions to her to the contrary and an argument ensued between the claimant and the store manager in the presence of the customer. The claimant was given an oral warning at that time. The claimant testified that she did not believe that ammunition was supposed to be accepted as a return item. This is true but the manager can override that and did so here but the claimant nevertheless argued with the manager. Just one day after this incident and the oral warning, the claimant initially argued with a customer about accepting the return of items for which the customer only had a gift receipt which did not show the cost of the items. When the claimant scanned one of the items, a holiday gift set, she obtained a different price on the item than what the customer said was paid. This was because the holiday gift set was now on markdown. All the claimant would have had to have done was to scan the bar code on the gift receipt. The claimant testified that she was not trained as to how to do this and her mother assisted. This may be understandable but the claimant then remarked to the customer "wouldn't it be funny if the second item didn't ring up for the right price." The claimant testified that she was uncomfortable and nervous but this appears to be a rude statement made to the customer. In addition the claimant had two other customer complaints. On the evidence here, the administrative law judge must conclude that the acts of the claimant were deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests, and are, at the very least, carelessness or negligence in such a degree of recurrence, any of which would establish disqualifying misconduct. The two specific incidents occurred one day apart and the claimant had received an oral warning for the first occurrence on the first day.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is

disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$372.00 since separating from the employer herein on or about December 28, 2005 and filing for such benefits effective January 1, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of January 19, 2006, reference 01, is reversed. The claimant, Alesha A. Cogdill, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$372.00.

kkf/tjc