

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER D CREAMER**  
Claimant

**APPEAL NO: 09A-UI-03046-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/28/08**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's February 11, 2009 decision (reference 01) that concluded Amber D. Creamer (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 23, 2009. The claimant participated in the hearing. Matthew Vogeler 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 21, 2008. Prior to her employment separation, the claimant worked as a café associate. When the employer hired the claimant, she learned that any of the employer's food an employee ate at work must be paid for before eating the food. If an employee did not pay for the employer's food, the employer would discharge the employee. The claimant's supervisor allowed the claimant and other employees to pay for food after a break or after they ate the food when the employee forgot to bring money on their break. The claimant understood she had to pay for the food, just not before she ate it.

On December 31, the cash register in claimant's department was \$400.00 short. While reviewing the video tape in an attempt to find out why there was a shortage, the employer saw some employees, not the claimant, take food without paying for the food. As a result of this discovery, the employer reviewed tapes of previous days. On a December 10, 2008, video the employer observed the claimant pay for a pizza and pop combo early in her shift. Later, the employer observed the claimant take a slice of pizza and did not pay for it.

When the employer talked to the claimant on December 31 about the December 10 incident, the claimant did not have a receipt to show she at sometime paid for the slice of pizza. Even

though the claimant's job was not in jeopardy prior to December 31, the employer discharged her because the employer has a zero tolerance policy for theft. The employer discharged the claimant on January 1, 2009.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Since the claimant's supervisor allowed employees to pay for food after consuming it and the claimant paid for a pizza and pop combo at the beginning of her December 10, 2008 shift, the fact she did not pay for a slice of pizza before she ate it later that day does not by itself establish that she intentionally disregarded the employer's interests or intended to eat the employer's food without paying for it. The December 10 incident does not by itself establish that the claimant intentionally committed work-connected misconduct. As of December 28, 2008, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's February 11, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. The evidence does not, however, establish that the claimant committed work-connected misconduct. Therefore, as of

December 28, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css