

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL J BROWN
Claimant

APPEAL NO. 07A-UI-01600-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01-07-07 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the January 30, 2007, reference 01, representative's decision which allowed benefits. After due notice was issued a hearing was held by telephone conference call on March 8, 2007. The claimant participated. The employer participated by Elizabeth Ritchie.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brown was employed as a cashier from approximately March 2001 until January 8, 2007 when she was discharged after admitting misappropriation of customer change. Ms. Brown was paid by the hour.

A decision was made to terminate Ms. Brown from her employment with Wal-Mart after the claimant admitted to misappropriating customer change from a self checkout area in the Wal-Mart facility. The employer had noted what appeared to be misappropriation by Ms. Brown on company security cameras but had initially delayed reviewing the matter and discharging the claimant until approximately three weeks after the videotape had recorded the claimant's activities. Prior to discharging the claimant on January 8, 2007, the employer interviewed Ms. Brown. Ms. Brown denied earlier misappropriation but admitted to taking customer change the previous day, January 7, 2007. Based upon the current act of misconduct, the claimant's admission and what the employer considered to be compelling video evidence which showed the claimant misappropriating funds at an earlier date, the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in showing the claimant was discharged for a current act of misconduct. While the claimant denied misappropriating customer change some weeks before, Ms. Brown admitted during an interview on January 8, 2007 that she had misappropriated customer change the previous day, January 7, 2007. The evidence establishes that the claimant was aware that misappropriating property of Wal-Mart or its customers was a violation of policy and could result in her termination from employment.

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.

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).

For the reasons stated herein, the administrative law judge is of the opinion that the employer has sustained its burden of proof in establishing disqualifying conduct.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,790.00.

DECISION:

The representative's decision dated January 30, 2007, reference 01, is reversed. The claimant was discharged for misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, providing she satisfies all other conditions of eligibility. The claimant is overpaid unemployment insurance benefits in the amount of \$1,790.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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