

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDRA S LENIG

Claimant

APPEAL NO. 07A-UI-01330-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 12-31-06 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 a timely appeal from the January 23, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 21, 2007. Claimant participated. Employer participated through Brenda Sanders, assistant manager.

ISSUE:

The issue 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 and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time cashier from February 21, 2005 until November 6, 2006 when she was discharged for failing to complete the terms of a "last chance agreement" to keep her employment with the company. Ms. Lenig had been absent from work for 10 consecutive days without notification to the employer. Upon her return, the claimant indicated that her absence was due to a "drug problem." The claimant agreed to enter and complete an inpatient drug rehabilitation program in order to keep her job. Before the program was completed, the claimant walked out of the rehabilitation program. Because the claimant did not fulfill the terms of the specific agreement between the parties, she was discharged from employment.

It is the claimant's position that she later entered a form of "outpatient" treatment and did not therefore breach the agreement.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged for misconduct in connection with her work. The claimant had failed to report for scheduled work for 10 consecutive days and had not notified the employer of her impending

absences. This conduct is clearly in disregard of the employer's interests and standards of behavior and could have led to the claimant's immediate discharge. The claimant however, was given a "last chance" at her request. It was specifically agreed between the parties that if the claimant entered and completed inpatient drug rehabilitation, she would not be discharged. If the claimant, however, did not complete the in-house drug rehabilitation, as agreed, she would be discharged. Ms. Lenig did not complete the inpatient drug rehabilitation, but instead walked out of the program before its completion. When the employer was informed that the claimant had not completed the program as agreed, she was discharged per the agreement between the parties. The administrative law judge finds that the claimant's later attempt to enter an outpatient program did not meet the terms of the last chance agreement between the parties. The employer has sustained its burden of proof establishing disqualifying misconduct. Benefits are denied.

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.

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.

DECISION:

The January 23, 2007, reference 01, representative's decision is hereby reversed. The claimant was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to 10 times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Claimant is overpaid unemployment insurance benefits in the amount of \$174.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/pjs