

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TESSA L BATES

Claimant

APPEAL NO: 11A-UI-14483-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 09/25/11

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's October 19, 2011 decision (reference 01) that concluded Tessa L. Bates (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2011. The claimant participated in the hearing. Allan Rye appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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?

FINDINGS OF FACT:

The claimant started working for the employer on October 21, 2008. She worked full time as a produce sales associate at the employer's Mason City, Iowa store. Her last day of work was September 26, 2011. The employer discharged her on that date. The stated reason for the discharge was theft and lying during the investigation.

The claimant's biweekly paycheck was routinely deposited onto a debit card issued by the employer. She typically would cash out the balance on the debit card each payday. On her payday of August 4 the employer deposited \$453.11 onto the claimant's card. She went to the employer's associate who could cash out the debit card, and was paid out \$450.00. However, in error the associate failed to delete the \$450.00 from the claimant's card balance, but rather added an additional \$450.00, so that the balance on the card was over \$900.00, rather than the \$3.11 it should have been.

A few days later the claimant used the card in a transaction and discovered there must have been more money on the card than she had expected. On August 16 she went to an automated teller machine and made three cash withdrawals from the card totaling \$606.00. Her next

payday deposit was on August 18, on which date the employer deposited her paycheck of \$563.76 onto the card; the same day the claimant withdrew \$650.00 from the card. By August 20 the claimant had once again reduced the card balance to zero, having spent or withdrawn both her payroll deposits and the additional \$900.00.

The fact that the associate had made some mistakes on several employees card payout was discovered by the employer on or about September 19. The employer then questioned the claimant about the additional \$900.00. The claimant denied being aware of the additional money on her card, and when asked what had happened to the money, indicated that the power company must have withdrawn the amount. The employer requested that the claimant provide her account balance statement.

On September 25 the claimant brought in her account statement. While there had been a withdrawal by the power company, this had not occurred until August 23 and was only in the amount of \$280.00, which occurred only after the claimant made a \$300.00 deposit into the account on that same date of August 23. On September 26 the employer brought the claimant back in for further discussion. At that point the claimant admitted that she had lied about realizing that the additional money had been deposited onto her card account and about what had happened to the money. As a result, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective September 25, 2011. The claimant has received unemployment insurance benefits after the separation.

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

While the claimant was not responsible for the initial mistake which resulted in the additional money being deposited onto her card, she was not candid or truthful during the subsequent investigation, which alone is sufficient to establish misconduct. White v. EAB, 448 N.W.2d 691 (Iowa 1989). The claimant's failure to be candid and truthful during the investigation 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's October 19, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 25, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css