

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER R BURKHART
Claimant

APPEAL NO: 12A-UI-05410-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/15/12
Claimant: Appellant (4)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 30, 2012 reference 01, that held she was discharged for gross misconduct on April 21, 2012, and benefits are denied. A telephone hearing was held on June 1, 2012. The claimant did not participate. Jeff Barker, and Julie McGraw, Asset Protection Managers, participated for the employer.

UI Appeals failed to state that discharge for “gross” misconduct is a hearing issue on the notice for hearing. Rather than postpone and re-schedule the hearing to correct this issue, the employer agreed that only misconduct (not gross misconduct) would be considered.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time cashier on July 14, 2011, and last worked for the employer on April 13, 2012. The employer has an electronic journal that alerts its cash register transaction issues. The journal alerted management that there was an issue with claimant register transactions.

Manager Barker reviewed the store security video of claimant's activity for a period from March 16 to April 16, 2012. He noted that claimant would manually over-ride the merchandise sales price for one particular customer involving coupons to allow that customer to make product purchases for an unjustifiable reduced price. Barker further determined that the customer profited \$500.00 from the merchandise purchases and claimant \$100.00.

The employer concluded claimant had intentionally under-rang the merchandise to the customer that is a violation of store policy, and committed coupon fraud in doing so. When it confronted claimant with the evidence on April 13, she admitted it her policy violations in a written statement.

Claimant was not available at the phone number provided when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

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 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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on April 13, 2012, for serious violations of company policy.

The claimant knew the employer coupon/merchandise policy and her repeated violations constitute job disqualifying misconduct.

DECISION:

The department decision dated April 30, 2012, reference 01, is modified. The claimant was discharged for misconduct on April 13, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css