

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KELLY L HOLCOMB**  
Claimant

**WALMART INC**  
Employer

**APPEAL 18A-UI-04972-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/01/18  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 19, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2018. The claimant, Kelly L. Holcomb, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, WalMart, Inc., participated through Abby Smotheress, Store Manager. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a cap-one associate, from March 26, 2005, until April 4, 2018, when she was discharged. On March 11, Smotheress witnessed claimant ringing up her daughter, who was also an employee. This is against the store's policy, and claimant was trained on this policy during orientation. After Smotheress witnessed this, she commenced an investigation into claimant's conduct. Smotheress found that on another occasion, claimant improperly processed a return for her daughter. Neither of these incidents involved actual theft or resulted in any harm to the employer. Claimant was interviewed on April 4, 2018. She admitted that she had rang up her daughter on March 11, stating that she forgot the policy. Claimant had been warned in the past for issues including job performance, punctuality, attendance, and cash shortages. However, she had no prior warnings for either processing returns improperly or improperly checking out family members.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,134.00, since filing a claim with an effective date of April 1, 2018, for the four weeks ending April 28, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview. Assistant Manager Kollin Kirby and Personnel Manager Lisa Schwietzer participated in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application

of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. In this case, claimant had no prior warnings for any similar conduct. While her conduct was inadvisable and violated the employer's policy, the employer was not actually harmed by the conduct. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed. Because claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The April 19, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/scn