

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JULIA L SMITH  
1136 PARKWAY DR  
BETTENDORF IA 52722

WAL-MART STORES INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-00298-HT  
OC: 11/27/05 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated December 29, 2005, reference 01. The decision allowed benefits to the claimant, Julia Smith. After due notice was issued a hearing was held by telephone conference call on January 25, 2006. The claimant participated on her own behalf. The employer participated by General Manager Even Jones.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Julia Smith was employed by Wal-Mart from November 30, 2003 until November 26, 2005. She was a full-time team leader in the bakery.

Ms. Smith received a coaching on August 9, 2004, for insubordination. She had been speaking "in an ill manner" about the bakery manager, Lynn Carstens. She was alleging the bakery manager "lied, did not do anything, was no help and should go to any other position" in the store.

On November 26, 2005, an associate, Geolyn McDonald, notified Assistant Manager Brandi Carlton that Ms. Smith had been making inappropriate remarks in the break room. Ms. Carlton and General Manager Even Jones interviewed Ms. McDonald and four other associates who had been in the break room. Three of the other associates all agreed with Ms. McDonald's statement that Ms. Smith said, "I am going to get that fat whore," and everyone who heard it understood she was referring to the bakery manager.

Ms. Carlton and Mr. Jones interviewed Ms. Smith, who denied making the statement but could not explain why the four other associates would lie, or have the same account of the incident. Ms. Smith became belligerent about the incident and other questions and concerns she had about pay, hours, and other things. She then told the general manger he was a "joke." She was discharged at the end of the meeting.

Julia Smith has received unemployment benefits since filing a claim with an effective date of November 27, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

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).

The claimant denies ever making any statements about the bakery manager, making inappropriate comments or receiving a coaching in August 2004. However, she was unable to explain how her associate user identification and the last four digits of her social security number were entered electronically onto the computer system in the areas reserved for acknowledging a coaching.

She has also been unable to explain why an associate would bring a complaint to the attention of the assistant store manager about her statements, and three other associates all agreed with the report, if it did not happen. While she referred to some type of conspiracy on the part of the management to fire her, this does not explain the statements from the associates which were all in agreement.

The administrative law judge does not find the claimant's denials to be credible in light of all the evidence and statements presented by the employer. The claimant had made threats against a manager and used abusive language in the break room. The employer has the obligation to provide a safe and harassment-free work environment for all employees, and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer, and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 29, 2005, reference 01, is reversed. Julia Smith is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,729.00.

bgh/kjw