

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY W STOLFA

Claimant

APPEAL NO. 07A-UI-08116-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 07/22/07 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated August 14, 2007, reference 01, which held that no disqualification would be imposed regarding Anthony Stolfa's separation from employment. After due notice was issued, a hearing was held by telephone on September 10, 2007. Mr. Stolfa participated personally. The employer participated by Anthony Ciabattoni, Store Manager.

ISSUE:

At issue in this matter is whether Mr. Stolfa was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stolfa was employed by Wal-Mart from December 4, 2004 until July 17, 2007 as a full-time clerk in the meat department. On June 30, 2007, a regular customer approached him regarding a family pack of steaks he wanted to purchase. The customer indicated the meat appeared discolored and asked Mr. Stolfa if there was anything he could do to reduce the price due to the discoloration. The meat appeared discolored to Mr. Stolfa as well and, therefore, he reduced the price by 30 percent. He did not have any personal relationship with the customer.

It is the employer's practice to mark meat down a day or two before the shelf life expires. The manager who checked the meat after it was purchased by the customer on June 30 felt the meat was not discolored. The manager also found that there were five days remaining on the meat's shelf life. Mr. Stolfa was on vacation from July 2 through July 16. He was notified of his discharge on July 17, 2007.

In making the decision to discharge, the employer also considered other disciplinary actions on Mr. Stolfa's record. He was given a "decision-making" day on July 16, 2006 due to his productivity. It was felt he was not putting product away fast enough. There were no further issues of productivity after the warning. He received a written warning on May 19, 2006 because he failed to properly close out the seafood section. He did not routinely work in seafood and closed out in the manner in which he had been trained. Mr. Stolfa received a

verbal warning on January 14, 2006 because he took 15 minutes longer for break than allowed. There were no further instances of excessive breaks after the warning.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). There must be a current act of misconduct to support a disqualification from benefits. See 871 IAC 24.32(8). In the case at hand, Mr. Stolfa's discharge was prompted by his actions of June 30, 2007. He discounted meat at the request of one of the store's regular customers because both he and the customer felt the meat was discolored. The administrative law judge appreciates that a manager felt the meat was not discolored and that there was no justification for reducing the price of the meat. His actions of June 30 represented a judgment call by Mr. Stolfa based on his observation of the meat.

Mr. Stolfa's conduct of June 30 did not result in any financial gain to him as the meat was not sold to a family member. He did not discount the meat for a friend as he had no personal relationship with the customer. He accommodated a regular store customer because he and the customer felt the meat was discolored. At most, his actions represented a good-faith error in judgment or discretion. Conduct so characterized is not considered misconduct. See 871 IAC 24.32(1). As such, the final act that triggered the discharge was not an act of misconduct.

The next most prior adverse conduct on Mr. Stolfa's part was in July of 2006, a year before his separation. Conduct that occurred in July of 2006 is too remote in time to support a disqualification based on a separation in July of 2007. For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish a current act that constituted misconduct within the meaning of the law. While the employer may have had good cause to discharge Mr. Stolfa, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Based on the foregoing, benefits are allowed.

DECISION:

The representative's decision dated August 14, 2007, reference 01, is hereby affirmed. Mr. Stolfa was discharged by Wal-Mart but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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