

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMY L WILLIAMS**  
Claimant

**APPEAL NO. 11A-UI-02005-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/16/10**  
**Claimant: Respondent (2R)**

Section 96.5-2-A – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 7, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 15, 2011. Claimant participated. Employer participated by Ryan Humpal, Overnight Assistant Manager. The record consists of the testimony of Ryan Humpal; the testimony of Tammy Williams; and Employer's Exhibits 1-13.

**ISSUES:**

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed by the store located on Floyd Boulevard in Sioux City, Iowa. The claimant was hired on March 2, 2006. Her last day of work was January 16, 2011. She was terminated on January 16, 2011. At the time of her termination she was a full-time maintenance associate. She had previously worked as stocker and cashier.

The incident that led to the claimant's termination occurred on January 16, 2011. The store became very busy and there were long lines at the checkouts. The claimant was paged to work as a cashier. The claimant refused to work on a register. She was terminated for insubordination.

## 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.

Misconduct that leads to termination occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) Failure to perform a specific task does not constitute misconduct if the failure is in good faith or for good cause. See Woods v. IDJS, 327 N.W.2d 768 (Iowa App. 1982) The employer has the burden of proof to show misconduct.

The evidence in this case is uncontroverted that the claimant refused to work on a register when asked to do so by the manager in charge. The claimant had been trained as a cashier and had worked on the registers in the past. The employer's policy is to provide customer service and it was common to ask employees to assist on the registers when lines were long. The claimant refused because another manager had not required her to work on the registers. Ryan Humpal testified that he could not speak for another manager, but store policy was to have employees work where needed. He also stated that he had a meeting at the start of his shifts and told employees that they might have to help out where needed during the shift. The claimant's belief that she did not have to follow the instructions of a manager is neither credible nor a reasonable belief.

The claimant did not like to work as a cashier because cashiers were paid twenty cents per hour less than maintenance associates. The claimant would not be paid the extra twenty cents per hour if she worked on a register. The claimant was asked repeatedly to quantify the amount of money she would not get if she worked on a register and she never provided an answer to that question. The amount of money the claimant would "lose" is so small as to be insignificant. Mr. Humpal testified that she would be asked to work a register for perhaps five or ten minutes.

The claimant had no good cause for refusing to work as a cashier. Her refusal is insubordination, which is misconduct. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The decision of the representative dated February 7, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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