

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE N MORTENSEN
Claimant

APPEAL NO. 11A-UI-13858-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09/25/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 11, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A hearing was held on January 23, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Shawn Cote participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a cashier from May 19, 2009, to September 23, 2011. She was informed and understood that under the employer's work rules, employees were subject to termination for having excessive cash handling violations.

On August 5, 2009, she received a verbal warning for having seven cash handling violations in 90 days. She received a written warning on March 12, 2010, after a customer gave her a check for \$207.64 and the claimant mistakenly returned the check to the customer along with the receipt. On November 2, 2010, the claimant was given a decision-making day, which is the last step in the discipline policy, for ringing up a purchase as cash instead of a debit card as it should have been entered which resulted in a \$270.01 shortage.

The claimant worked on September 3, 2011. Under the employer's register procedures, at the end of the shift, the cashier takes the drawer to the cash office and makes sure there is \$150 in cash in the drawer. A bag with the remaining cash and checks is turned in to be locked up until the next day when the money is counted by the accounting office. On September 4, when her money was counted it, was determined that she had a cash shortage of \$100.00. The claimant was not told about the cash being short until September 9 because the accounting department first tries to locate the source of the error. The claimant was not told the source of the error or that her job was in jeopardy on September 9. She could not account for the error due to the delay in informing her about the shortage, but she did not take the money and it is possible that

it was due to something other than her negligence as money is sometimes taken from a register to loan to another register during the day.

The employer discharged the claimant on September 23, 2011, for her cash shortage on September 3 and her prior discipline. The two-week delay from September 9 to 23, 2011, was due to the club manager needing to consult with human resources about the appropriate discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In *Greene v. Employment Appeal Board*, 426 N.W.2d 659, 662 (Iowa App. 1988) the Iowa Court of Appeals ruled that to determine whether conduct prompting the discharge constitutes a disqualifying current act, the decision maker must consider the date on which the conduct came to the employer's attention and the date on which the employer notified the employee that the conduct provided grounds for dismissal. Any delay in taking action must have a reasonable basis. The court decided that the three-day delay between final act and notice of possible dismissal was not unreasonable.

The shortage in this case occurred on September 3, and management was immediately aware of the conduct the next day. The claimant was not informed about the shortage until September 9. She was not told at that time that she was in jeopardy of dismissal. The discharge did not take place until 19 days after the employer was aware of the incident and 14 days after the claimant was told about the shortage. She was allowed to continue to work until September 23. I cannot conclude there was a reasonable basis for the delay in taking action here. In addition, I cannot conclude the employer has proven by the preponderance of the evidence that the claimant committed willful misconduct or negligent conduct on September 3 that caused the shortage.

DECISION:

The unemployment insurance decision dated October 11, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs