

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREG HARRINGTON

Claimant

APPEAL NO. 07A-UI-07138-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 07/1607 R: 01
Claimant: Respondent (2)**

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 July 16, 2007, reference 01. The decision allowed benefits to the claimant, Greg Harrington. After due notice was issued, a hearing was held by telephone conference call on August 21, 2007. The claimant participated on his own behalf. The employer participated by Co-Manager Todd Vanessen and Personnel Manager Debbie Piercy. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Greg Harrington was employed by Wal-Mart from November 4, 1991 until June 27, 2007, as a full-time member of the inventory control staff.

On June 27, 2007, the claimant appeared for work and was clocked in by Assistant Manager Karen Wisneski, at which time she asked him why he was not dressed in accordance with the dress code. He was wearing shorts and flip flops and the code requires brown slacks and a blue shirt. Mr. Harrington told her he would purchase the items in the store and change right away. Ten minutes later Ms. Wisneski found him in the lawn and garden department where he was discussing his personal problems with other staff. He had been recently kicked out of his house by his wife and they were in the process of a divorce. Mr. Harrington was very distraught at the time and when the assistant manager asked him when he was going to change his clothes, he said he would do so “when [he] was damned good a ready” and told her to “fuck off.”

The claimant was summoned to the manager's office a short time later and discharged for “gross misconduct” under the employer's policy. The next day when he picked up his check he did admit to Personnel Manager Debbie Piercy that he had used the inappropriate language to Ms. Wisneski and when asked why he had done it, he said he “just did not care anymore.”

Grey Harrington has received unemployment benefits since filing a claim with an effective date of June 24, 2007.

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.

The claimant denies using any inappropriate language to the assistant manager, but also stated he was so distraught that day he "hardly knew what [he] was doing." He did not request time off to deal with his personal problems, but chose to spend time while on the clock, and out of uniform, talking with other associates about his problems while they were also on the clock, and in an area where his work duties did not require him to be.

His conduct toward Ms. Wisneski was certainly out of character by all accounts, but that does not mean he did not do it. He seems to feel it was the responsibility of the employer to anticipate and help him resolve his personal problems, although he never made any request for any type of help, up to and including a referral to an employee assistance program or a leave of absence.

He also maintained the events never happened, but could not provide any adequate explanation as to why Ms. Wisneski would fabricate such a story especially, as he had pointed out, after he had worked for the company for nearly 16 years. The administrative law judge concludes the claimant was discharged for using vulgar and profane language to a manager, in front of other

employees and potentially in front of customers, while on the clock. 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 he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 16, 2007, reference 01, is reversed. Greg Harrington is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,887.00.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/css