

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODELL POST**

Claimant

**APPEAL NO: 09A-UI-03072-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 01/04/09**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jodell Post (claimant) appealed an unemployment insurance decision dated February 16, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Wal-Mart Stores, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2009. The claimant participated in the hearing. The employer participated through Thomas Baumgartner, Asset Protection Coordinator. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time overnight cashier from April 1, 2004 through December 15, 2008 when she was discharged for theft. On December 10, 2008 the claimant went to the deli and obtained three containers of food product. She ordered a container of popcorn chicken, a container of barbeque wings and a container of macaroni and cheese. The claimant had other items and went to a self-serve cash register but did not scan or pay for the deli items; she then left the store with the unpaid merchandise. The employer has a zero tolerance policy regarding theft, regardless of the cost of the theft. The claimant testified she went to scan the items but saw that there was no price tag and set them to the side, forgetting about them.

The transaction occurred at approximately 10:30 a.m. and there were numerous managers and customer service managers who could have assisted her had she simply asked. The employer became aware of the incident through co-employees reporting it. The asset protection coordinator began an investigation and reviewed the surveillance tapes which showed the claimant not attempting to scan the deli items, although she disputes this fact.

The employer questioned the claimant on December 15, 2008 and she admitted her actions but denied they were intentional. She stated she tried to correct the error after the fact but was unable to do so. The claimant admitted the deli clerk weighed the products because she told the employer the cost of each item but could not explain where the price labels went. She was discharged after that meeting.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for theft when she removed three food products from the store without paying for them. The employer has a zero tolerance policy on theft. Since the claimant was a cashier, it is rather unlikely that she would have unknowingly left the store without paying for products. If there was a problem with a price sticker, the claimant surely could have straightened it out before leaving. The claimant's actions show a willful or wanton disregard of the standard of behavior the employer has the right to

expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated February 16, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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