

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - E1

CONSTANCE F HICKS
1217 ESPLANADE AVE
DAVENPORT IA 52803

WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0293

Appeal Number: 05A-UI-00538-DWT
OC: 12/12/04 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's January 5, 2005 decision (reference 01) that concluded Constance F. Hicks (claimant) was qualified to receive unemployment insurance benefits, and the employer's account as subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2005. The claimant responded to the hearing notice, but was not available for the hearing. Even though a message was left for the claimant to contact the Appeals Section immediately, she did not. Brian Drechney, a district loss prevention supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 2004. She worked as a part-time cashier. As an employee, the claimant received a discount card that she could use for herself. The claimant understood she was not authorized to give the discount card to friends or relatives to use.

In late November 2004, a store security officer observed that the claimant did not pay for a shirt when she went through her cousin's checkout counter. The security officer contacted Drechney. On December 2 when Drechney questioned the claimant about the shirt, he did not believe the claimant did not know her cousin did not charge her for the shirt. Before Drechney talked to the claimant, the employer discovered the claimant's discount card had been used during times the claimant was working. The claimant admitted she allowed unauthorized people to use her discount card even though she knew the employer's rules did not allow her to do this.

The employer discharged the claimant on December 2, 2004. The employer discharged her because she intentionally violated the employer's rules concerning employee discount cards and committed misconduct when she did not pay for a shirt.

The claimant established a claim for unemployment insurance benefits during the week of December 12, 2004. She filed claims for the weeks ending December 18, 2004 through January 15, 2005. She received her maximum weekly benefit amount of \$65.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood the rules about employee discount cards and she intentionally violated these rules. The employer established the claimant was discharged for reasons constituting work-connected misconduct. As of December 12, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment

insurance benefits during the weeks ending December 18, 2004, through January 15, 2005. The claimant has been overpaid \$325.00 in benefits she received for these weeks.

DECISION:

The representative's January 5, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 12, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending December 18, 2004, through January 15, 2005. The claimant has been overpaid and must repay \$325.00 in benefits she received for these weeks.

dlw/pjs