

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SRDAN GOLUB
Claimant

APPEAL NO. 07A-UI-04053-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/18/07 R: 03
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 6, 2007, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 7, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. James Pearson participated in the hearing on behalf of the employer with a witness, Jeff Solomon.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant, Srdan Golub, worked full time for the employer as a sales associate from July 15, 2003, to March 19, 2006. On March 19, Golub was working in the product department. The assistant manager, Jeff Solomon, asked the claimant to help out in the deli because the deli was short staffed at the time. The claimant was on his way to take a break.

The claimant told Solomon that he would not go to the deli, and if Solomon insisted, he was leaving. He refused because his regular job was working in the produce section and he believed he was being asked to work too much in the deli, which kept him from completing all his produce work.

As they went to the back of the store, they encountered the co-manager, James Pearson. The claimant complained to Pearson about having to work so much in the deli. He asked Pearson about the employer's pay policy because deli workers received higher pay than produce workers. Pearson explained that he would have to spend over 50 percent of his time in the deli for two weeks before he would get a higher rate of pay and had not spend that amount of time. The claimant then raised his voice and complained about all the pressure they were putting on him. The claimant then used profanity on the sales floor loud enough for customers to hear.

Pearson then directed Solomon to take the claimant to the back and discharged him. The employer discharged the claimant for insubordination and using profanity on the sales floor. The employer also considered that the claimant had been disciplined six prior times, including a final warning on January 7, 2007, for excessive absences. He was informed the next step in the disciplinary policy was termination.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 18, 2007. The claimant filed for and received a total of \$1,521.00 in unemployment insurance benefits for the weeks between March 18, and May 12, 2007.

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.

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's violation of a known work rule prohibiting insubordination and using profanity was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,521.00 in benefits for the weeks between March 18, and May 12, 2007.

DECISION:

The unemployment insurance decision dated April 6, 2007, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,521.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw