

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A JIPSON
Claimant

APPEAL NO. 08A-UI-04345-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/06/08 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.34(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated April 25, 2008, reference 01. The decision allowed benefits to the claimant, Jeffrey Jipson. After due notice was issued, a hearing was held by telephone conference call on May 20, 2008. The claimant participated on his own behalf. The employer participated by Operations Assistant Manager. Jeremy McDowell

ISSUE:

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

FINDINGS OF FACT:

Jeffrey Jipson was employed by Wal-Mart as a full-time worker in the Sam's Club café. On January 18, 2008, two members were at the member services desk receiving a large cash refund of approximately \$2,000.00. Mitch, from the accounting office, had brought the cash to the desk and Operations Assistant Manager Jeremy McDowell was there to count and verify the amount. A member services associate, Amanda, was also at the desk.

Mr. Jipson was leaving at the of his shift and had already punched out. He came behind the member services desk with his ski mask pulled down to completely cover his face. To Mitch he said, "this is a stick up, I'm here for all the money." He laughed and then left. Mr. McDowell, Mitch and one of the members receiving the refund heard the comment. The member was definitely upset but Mr. McDowell was able to reassure her that it was a joke and the masked person was an employee.

Mr. McDowell consulted with the general manager and the district marketing manager about the incident. It was decided this constituted a violation of the violence free workplace policy which calls for discharge for anyone making "veiled threats."

Jeffrey Jipson has received unemployment benefits since filing a claim with an effective date of April 6, 2008.

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 was discharged for a single incident. In order to be disqualified from unemployment benefits for a single incidence of misconduct, the misconduct must be a deliberate violations or disregard of standards of behavior which the employer has the right to expect of employees. Henry v. IDJS, 391 N.W.2d 731 (Iowa App. 1986). In the present case the claimant entered the employees-only area of the member services desk, masked and demanding money. Whether or not the other employees knew who he was and knew it was a joke, the members standing at the desk receiving a large cash refund, did not. He created an alarming situation for customers of the business and caused more than a little distress to the woman who heard the threat.

The administrative law judge considers this to be more than a one-time error in judgment, and certainly more than an ill-advised joke. The donning of the ski mask by Mr. Jipson and the demand for money is a "veiled threat of violence" which is prohibited conduct under the employer's policies. It 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 April 25, 2008, reference 01, is reversed. Jeffrey Jipson 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 \$1,278.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css