

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY J LYNCH**  
Claimant

**APPEAL NO. 08A-UI-10700-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 09/07/08 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Cindy J. Lynch filed a timely appeal from an unemployment insurance decision dated November 3, 2008, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held November 3, 2008 with Ms. Lynch participating. Asset Protection Coordinator Kristen Wooley participated for the employer, Wal-Mart Stores, Inc. Exhibits One and Two were admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Cindy J. Lynch was employed as a cashier by Wal-Mart Stores, Inc. from August 22, 2007 until she was discharged on January 31, 2008 for theft of merchandise.

Asset Protection Coordinator Kristen Wooley received an oral report from a store employee that he had seen Ms. Lynch failing to pay for merchandise at the self checkout lane. After reviewing surveillance tapes, Ms. Wooley interviewed Ms. Lynch on January 31, 2008. Ms. Lynch acknowledged switching tags and failing to scan merchandise before removing it from the store.

Ms. Lynch was prosecuted for this. She was convicted on a simple misdemeanor theft charge.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 evidence in the record persuades the administrative law judge that Ms. Lynch did not make an inadvertent error but that she deliberately removed company property without properly paying for it. Most significant in the evidence in this record is the testimony that Ms. Lynch was convicted on a criminal prosecution, a proceeding in which the burden of proof is beyond a reasonable doubt, not the simple preponderance of evidence standard for a hearing such as this. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated November 3, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Dan Anderson  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs