

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHALAVAH BUNDU

Claimant

APPEAL NO. 10A-UI-04748-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 02/21/10

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated March 15, 2010, reference 01, which held that no disqualification would be imposed regarding Shalavah Bundu's separation from employment. After due notice was issued, a hearing was held by telephone on May 17, 2010. Ms. Bundu participated personally. The employer participated by Andrew Jackson, Shift Manager. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Bundu was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bundu was employed by Wal-Mart from October 18, 2008 until February 23, 2010. She worked from 20 to 32 hours each week as a cashier. She was discharged from the employment. Her discharge was prompted by a series of shortages at her register.

Ms. Bundu received a coaching on January 18, 2010 due to six "register audit alerts" (RAA) beginning September 5, 2009. The errors were all due to her handling of vouchers from the Women, Infants and Children's (WIC) feeding program. She allowed three customers to have whole milk or two percent milk instead of one percent milk as indicated on the coupon. On another occasion, she gave cereal instead of formula. On another occasion, she gave the customer 46 ounces of juice instead of 64 ounces. The final incident involved Ms. Bundu cashing out a transaction that should have been voided.

On February 15, 2010, Ms. Bundu was again counseled regarding her RAA's. There had been five RRA's since the prior warning. On January 6 and January 20, she cashed out transactions that should have been voided. On January 27, she accepted a voucher to pay a \$7.92 transaction but the voucher was only valued at \$6.00. On February 2, she neglected to have a customer sign the WIC check. On February 13, she failed to void a debit card transaction. The warning advised Ms. Bundu that she would be discharged if there were any further errors. The decision to discharge was based on an error of February 20. On that date, she gave the WIC customer a half-gallon of milk instead of one quart. She was notified of her discharge on February 23, 2010.

Ms. Bundu filed a claim for job insurance benefits effective February 21, 2010. She has received benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Bundu was discharged because of repeated errors in the performance of her job. She received a warning on January 18 concerning problems involving her handling of WIC vouchers. Given this warning, she should have known that the employer expected her to be more attentive to the WIC vouchers and other vouchers. In spite of the counseling, she still had four additional errors just one month later. Two of the errors found in February had been addressed with her in January, cashing out transactions that should have been voided.

Ms. Bundu was clearly on notice as of February 15 that her continued employment was in jeopardy. She still was inattentive with respect to the customer on February 20. She allowed the customer to have one half-gallon of milk instead of one quart of milk. When Ms. Bundu gave the customer a more expensive item than called for in the voucher, the employer had to absorb the additional cost. Her failure to use the level of due care required by the employer constituted a substantial disregard of the employer's interests, as it resulted in lost revenue to the employer. Ms. Bundu had been warned twice and, therefore, had ample opportunity to conform her performance to the employer's standards. Her failure to do so constituted disqualifying misconduct. As such, benefits are denied.

Ms. Bundu has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated March 15, 2010, reference 01, is hereby reversed. Ms. Bundu was discharged by Wal-Mart for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Bundu will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw