

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 - EI

MISTY A MACK
740 WATER ST
WARSAW IL 62379

WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-01451-RT
OC: 01-08-06 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 for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated January 26, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Misty A. Mack. After due notice was issued, a telephone hearing was held on February 23, 2006, with the claimant participating. Sandy Anderson, Assistant Manager at the employer's store in Keokuk, Iowa, where the claimant was employed, participated in the hearing for the employer. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time deli associate from October 13, 2004, until she was discharged on January 10, 2006. The claimant was discharged for violating the employer's open door policy, as shown at Employer's Exhibit One, and for violating the employer's ethics policy by requesting that co-workers lie for the claimant about a sexual harassment claim. On or about December 8, 2005, the claimant filed a formal sexual harassment complaint under the employer's policies against a co-worker. The claimant approached two associates and discussed with them the sexual harassment complaint and then asked the two associates to lie for her in the investigation being conducted by the employer concerning the claimant's sexual harassment complaint. During the course of the investigation the two associates informed the employer's investigators that the claimant had asked them to lie. They did not believe the claimant was joking. The employer's open door policy, as shown at Employer's Exhibit One, specifically prohibits disclosing any information concerning matters raised in the open door policy with anyone not directly involved in resolving the issue. When the employer learned that the claimant had discussed this matter with associates and asked them to lie, the employer confronted the claimant on January 9, 2006. After initially denying it, the claimant conceded that she had asked the associates to lie but stated that she was merely joking. The claimant had received no relevant warnings or disciplines. Pursuant to her claim for unemployment insurance benefits filed effective January 8, 2006, the claimant has received unemployment insurance benefits in the amount of \$588.00 as follows: \$112.00 for benefit week ending January 14, 2006 (earnings \$36.00); and \$119.00 per week for four weeks from benefit week ending January 21, 2006 to benefit week ending February 11, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on January 10, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Sandy Anderson, Assistant Manager at the employer's store in Keokuk, Iowa, where the claimant was employed, credibly testified that the claimant filed a formal sexual harassment complaint against a co-worker and then discussed this matter with two other associates, in violation of the employer's open door policy, and then asked the two associates to lie for her. Ms. Anderson testified that this also violated the employer's ethics policy. The claimant concedes that she talked to the associates about her sexual harassment complaint and further concedes that she was aware of the employer's open door policy which prohibits disclosing to anyone not directly involved in resolving the issue any information concerning a matter raised in the open door policy. The claimant also conceded that she told the two associates to lie, but the claimant testified that she was just joking. The administrative law judge sees no humor whatsoever in asking associates to lie about a matter as serious as a sexual harassment complaint. Ms. Anderson credibly testified that the two associates did not take the claimant's request as a joke. Accordingly, the administrative law judge concludes that the claimant's discussing the matter with the associates in violation of the open door policy and asking the associates to lie were deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. What occurred here is far more than ordinary negligence in an isolated instance or a good-faith error in judgment or discretion. The claimant knew of the employer's open door policy but nevertheless violated it and further should have known that asking employees to lie, even in a joking manner, is inappropriate. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such 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.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$588.00 since separating from the employer herein on or about January 10, 2006, and filing for such benefits effective January 8, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 26, 2006, reference 01, is reversed. The claimant, Misty A. Mack, is not entitled to receive unemployment insurance benefits until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$588.00.

kkf/kjw