

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

DELORES DEVOLL
813 JOHNSON ST
HAMILTON IA 50116

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

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Appeal Number: 06A-UI-01137-C
OC: 01/01/03 R: 03
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 Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 18, 2006, reference 01, which held that no disqualification would be imposed regarding Delores Devoll's separation from employment. After due notice was issued, a hearing was held on June 13, 2006 in Ottumwa, Iowa. Ms. Devoll did not appear for the hearing but was represented by Wesley Chaplin, Attorney at Law. There was a recent death in Ms. Devoll's family and the funeral was on June 12, 2006. She had indicated to her attorney that she would be participating in the hearing in spite of the recent death. There was no timely request for a continuance of the hearing. The employer participated by Susan Rauch, Personnel Manager; Toni Beadle, Customer Service Manager; and Dan McKinney, Store Manager. The employer

was represented by Monica Hendricks of TALX UC eXpress. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Devoll was employed by Wal-Mart from August 5, 1998 until January 3, 2006 as a full-time associate. She was discharged for shoving a co-worker.

On November 23, 2005, Ms. Devoll received a warning after she shoved Toni Beadle while the two were in the cooler. She pushed a two-shelf cart into Ms. Beadle. Ms. Beadle believed Ms. Devoll saw her and pushed her intentionally. The warning advised that Ms. Devoll was to avoid confrontations with co-workers as violent behavior would not be tolerated.

On December 30, Ms. Beadle approached Ms. Devoll to offer assistance in reworking product. She asked Ms. Devoll what items she had already gone through so as not to duplicate her work. Ms. Devoll became upset and, using both hands, pushed Ms. Beadle backwards through a set of double doors. She initially denied the allegation when confronted by the employer. However, her actions were observed on the video surveillance tape. As a result of this incident, Ms. Devoll was discharged on January 3, 2006.

Ms. Devoll has received a total of \$5,634.00 in job insurance benefits since filing her claim effective January 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Devoll was separated from employment for any disqualifying reason. 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. Devoll was discharged after she shoved another employee. She had been warned in November of 2005 that pushing another associate would not be tolerated. The incident in November may well have been inadvertent on Ms. Devoll's part. However, the warning that resulted from the incident clearly put her on notice that pushing another associate would be grounds for discharge.

In spite of the November 23, 2005 warning, Ms. Devoll again pushed an associate on December 30, 2005. She did not participate in the hearing to offer an explanation for her actions. The fact that she used both hands to push Ms. Beadle persuades the administrative law judge that the pushing was intentional. The employer had the right to expect a violence-free workplace. Ms. Devoll's conduct in pushing a co-worker after having been warned about such conduct approximately one month prior constituted a substantial disregard of the standards the employer expected. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Devoll has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 18, 2006, reference 01, is hereby reversed. Ms. Devoll was discharged by Wal-Mart for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Devoll has been overpaid \$5,634.00 in job insurance benefits.

cfc/cs