

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

GREGORY N DOUDY
6465 THERESA DR
JOHNSTON IA 50131

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

Appeal Number: 06A-UI-01191-JTT
OC: 12/11/05 R: 02
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

STATEMENT OF THE CASE:

Wal-Mart filed a timely appeal from the January 19, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on February 16, 2006. Claimant Gregory Doudy participated. District Loss Prevention Supervisor Jode Jensen represented the employer. The administrative law judge took official notice of Agency administrative records that indicate the claimant has collected no benefits in connection with the claim. With the permission of the parties, the administrative law judge took official notice of the conviction entered in Polk County Case number SMAC279281.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gregory Doudy was employed by Wal-Mart as a full-time associate from June 23, 2004 until

December 12, 2005, when Assistant Manager James Dawkins discharged him for misconduct. The final incident that prompted the discharge came to the attention of the employer on December 9, 2005, when a cash office clerk reported to District Loss Prevention Supervisor Jode Jensen that a register in the "connection center" was short \$51.59 on December 8, 2005. On November 30, the cash office clerk had reported two shortages of \$51.59 for two registers in the "connection center" on November 29, 2005. After the first two shortages were discovered, the employer had reviewed video surveillance in search of the transactions in question, but had been unsuccessful. When the third identical shortage was reported on December 9, the employer reviewed the surveillance video from the previous day and observed Gregory Douady remove a pre-paid phone card from a rack, scan the card at the register to activate it, and then place the card in his pocket without depositing payment in the register. The employer noted that Mr. Douady had used a coworker's ID to enter the transaction. The employer then reviewed the video surveillance for November 29 and located the transactions wherein Mr. Douady misappropriated two pre-paid phone cards. The employer reviewed the transactions records and observed that the times of the transactions corresponded with the times indicated on the video surveillance. No customers or other employees had been present at the time Mr. Douady committed the thefts.

On December 12, Ms. Jensen interviewed Mr. Douady about the apparent thefts. Assistant Manager James Dawkins was also present. Mr. Douady admitted to the three thefts and admitted to several more. In all, Mr. Douady admitted to misappropriating \$320.00 worth of pre-paid phone cards over a three-month period. Mr. Douady provided a written statement confessing to the thefts. The employer discharged Mr. Douady and Mr. Douady was arrested and charged with the theft(s) at that time. On December 21, Mr. Douady entered a guilty plea to Theft in the Fifth Degree in Polk County case number SMAC279281.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Douady was discharged for misconduct in connection with the 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.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Doudy acted with willful and wanton disregard of the interests of the employer on December 8 when he committed theft of Wal-Mart property. The evidence further establishes that Mr. Doudy acted with similar willful and wanton disregard on several other occasions during the last three weeks of his employment. The total retail value of the property stolen was \$320.00.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Doudy was discharged for misconduct. Accordingly, Mr. Doudy is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Doudy.

DECISION:

The Agency representative's decision dated January 19, 2006, reference 03, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged.

jt/pjs