

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORI A SMITH
Claimant

APPEAL NO. 07A-UI-03195-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02-18-07 R: 03
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 16, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 12, 2007. The claimant did not participate. The employer did participate through (representative) Patrick Moeller, Assistant Manager and Tim Timmer, Market Asset Protection Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier full time beginning May 3, 2006 through January 12, 2007, when she was discharged.

The employer discovered on September 30, 2006 that there was \$200.00 dollars missing from a drawer the claimant was responsible for using. Video surveillance revealed that the claimant took a \$200.00 gift card on September 26, 2006. After taking the card and before the employer discovered the claimant's theft, the claimant left work on maternity leave and the employer was unable to conduct their investigation until the claimant returned to work from her maternity leave. The claimant returned to work during the first week in January 2007. She was interviewed by Mr. Timmer on January 12, 2007, at which time she admitted stealing the \$200.00 gift card as well as an additional \$50.00 cash from a cash drawer the week prior. The Cedar Rapids police were called and the claimant was arrested and charged with theft. The claimant freely signed a statement, found at Employer's Exhibit One, admitting her theft of the gift card and the cash.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 claimant stole a gift card valued at \$200.00 and \$50.00 cash from the employer. She knew or should have known that theft from the employer and their customers is conduct not in the employer's best interest. The claimant's theft constitutes sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

The employer's investigation and termination were justifiably delayed by the claimant's maternity leave. The claimant was discharged for a current act of misconduct as the employer acted to investigate shortly after the claimant returned to work.

DECISION:

The March 16, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css