

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARILYNN S TRAVIS
Claimant

APPEAL NO. 10A-UI-00173-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/08/09
Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 1, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 11, 2010. Employer participated by Joe Riede, asset protection control. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Joe Riede and Employer's Exhibits 1-9.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Wal-Mart store located in Des Moines, Iowa. The claimant was hired on May 7, 1998. She was terminated on October 27, 2009. At the time of her termination she was an overnight cashier. Besides checking out customers, her job duties included gathering trash from checkout lanes and straightening counters in the front end of the store.

On October 18, 2009, one the supervisors went to register #30 to remove some of the money from the cash drawer and get the register ready for the next day. During that process, the supervisor inadvertently put a \$100.00 bill in the trash. The claimant was responsible for emptying the trash. When she saw the \$100.00 bill in the trash, she put it in her pocket. Her actions were captured on store video. The employer has a policy that if money is found in the store, the employee is to take the money to the cash office or the service desk or notify the manager. This rule is part of what the employer deems its integrity policy.

The employer discovered that one of the cash registers had a shortage of \$100.00. An investigation ensued. First the electronic journals were reviewed and this review did not disclose what happened. Store video was then reviewed, which showed the claimant pocketing

the \$100.00 bill. Her cash register activity was then reviewed and no other integrity issues were discovered. The claimant was then questioned by store personnel and she admitted that she had taken the money. She was terminated on October 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by a worker is honesty. An employer can reasonably expect that an employee will follow its work rules and not appropriate money or other property. A breach of this duty is misconduct.

The evidence in this case is uncontroverted that the claimant found a \$100.00 bill in the trash. Instead of turning it in to the cash office or notifying a supervisor, she put the money in her pocket. Her action was captured on store video tape and she later admitted to having done so when questioned by store personnel. The claimant elected not to participate in the hearing and the employer's evidence is un rebutted. The employer has shown misconduct. Benefits are denied.

DECISION:

The decision of the representative dated December 1, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs