

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

JENNIFER L HARMSSEN
707 SYCAMORE ST
LA PORTE CITY IA 50651

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

Appeal Number: 04A-UI-11642-CT
OC: 09/26/04 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 October 18, 2004, reference 01, which held that no disqualification would be imposed regarding Jennifer Harmsen's separation from employment. After due notice was issued, a hearing was held by telephone on November 24, 2004. Ms. Harmsen participated personally. The employer participated by Gary Pavlik, Co-Manager, and Jack Livingston, Assistant Manager. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Harmsen was employed by Wal-Mart from June 8, 2000 until September 28, 2004. She was last employed full time as a deli clerk. She was discharged from the employment.

On September 26, Ms. Harmsen reported to work at 9:00 a.m. even though she was not feeling well. She began vomiting at approximately 11:00 and told associates working with her that she needed to go home. The other associates did not have any supervisory authority over Ms. Harmsen. She did not contact any manager to request permission to leave and remained at work. At approximately 1:00 p.m., she told a coworker that she had to leave and was intending to go to the bathroom. Ms. Harmsen did not get out of the deli area before she lost control of her bowels. Rather than continuing on to the bathroom, she remained in the deli. She told two coworkers what had just occurred and tied her apron so that it would cover the rear of her pants. She felt behind herself as if to see if the stain had penetrated her pants. According to a coworker, it had. When a customer approached the deli counter, Ms. Harmsen went to assist him. She proceeded to slice meat for the customer without first washing her hands or changing her gloves. When she was done waiting on the customer, she removed her apron and put it on the counter but retrieved it before actually leaving the deli.

As a result of the above incident, the deli area had to be sanitized. After the incident was reported to management, Ms. Harmsen was discharged on September 28, 2004. She had been trained on the proper sanitary standards to be used around food. The above matter was the sole reason for the discharge.

Ms. Harmsen has received a total of \$317.00 in job insurance benefits since filing her claim effective September 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Harmsen 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. Harmsen was discharged for violating the employer's sanitation standards. She lost control of her bowels while in the deli and then waited on customer without taking any precautions against contamination. She told two coworkers what had happened and then tied her apron to hide the stain. She felt behind her and then proceeded to slice meat for a customer. Given the area, her coworkers would have seen if Ms. Harmsen had either washed her hands or changed her gloves. Her failure to do either constituted a substantial disregard of the standards an employer had the right to expect. Moreover, Ms. Harmsen placed her stained apron on the food counter before retrieving it and leaving.

Ms. Harmsen disagreed with the version of the facts as stated by her coworkers. The administrative law judge resolves any doubt in the employer's favor. Ms. Harmsen had been at work while ill and vomiting for several hours without requesting permission from a manager to go home. Working with food products while one is ill to the extent of vomiting shows a lack of regard for health and sanitation. An individual who engages in such conduct is likely to disregard sanitation in the manner described by Ms. Harmsen's coworkers. Ms. Harmsen knew

or should have known that her actions were contrary to the employer's interests. Her conduct could have resulted in illness being transmitted customers.

After considering all of the evidence, the administrative law judge concludes that the employer has established disqualifying misconduct. Although this was an isolated incident, it was sufficiently egregious as to constitute misconduct. Accordingly, benefits are denied. Based on the decision herein, the benefits already received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 18, 2004, reference 01, is hereby reversed. Ms. Harmsen was discharged 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. Harmsen has been overpaid \$317.00 in job insurance benefits.

cfc/tjc