

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMILY M MITCHELL**  
Claimant

**APPEAL NO. 07A-UI-04422-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 04/08/07 R: 03**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated April 20, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits based upon her separation from Wal-Mart Stores. After due notice was issued, a telephone conference hearing was held on May 16, 2007. Claimant participated personally. The employer participated through Greg Cason, store manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for this employer from August 14, 2006 until February 12, 2007, when she was discharged for misappropriation of company funds. Ms. Mitchell was employed as a cashier on a full-time basis and was paid by the hour.

Ms. Mitchell was discharged from her employment with Wal-Mart after she was personally observed by a videotape by the store manager, Greg Cason, misappropriating twenty dollars from a store cash register. The claimant was clearly identified by the store manager and the claimant's actions and the denomination of the cash taken by the claimant was personally observed by Mr. Cason. Following a further investigation, the claimant was called to a meeting on February 12, 2007. At that time, Ms. Mitchell apologized for stealing company funds, stating that she had done so to purchase diapers for her child. Based upon the videotape clearly showing the claimant misappropriating funds and her admission, the claimant was discharged from employment at that time. Charges were filed against Ms. Mitchell. Subsequently, it appears that the charges were dismissed, as the employer was unaware of a scheduled court hearing in the matter.

It is the claimant's position that although she admitted to misappropriating money when confronted on February 12, 2007 and signed a written statement to that effect, that she did so only believing that her confession would vindicate her and allow her to continue in her employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge in this case concludes based upon the evidence in the record, that the employer has sustained its burden of proof by preponderance of the evidence in establishing that Ms. Mitchell was discharged under disqualifying conditions. The evidence in the record establishes that Mr. Cason, the store manager, personally observed the videotape and identified Ms. Mitchell as the individual misappropriating company funds. Mr. Cason further testified that computer records, as well as his personal observations, confirmed that it was the claimant who was on duty at a designated cash register and was observed placing twenty dollars from the cash register into her smock and not returning it. Mr. Cason further testified that the claimant willingly signed a statement acknowledging the theft and that company policy is not to coerce individuals being investigated, but to inform them at the outset that they are free to leave if they do not wish to make a statement. It is Mr. Cason's position that if Ms. Mitchell was subsequently detained, it was because police authorities had done so based upon her admission of theft in their presence.

Although the administrative law judge is aware that Ms. Mitchell now maintains that she did not misappropriate funds and that she signed her written admission because, in effect, she did not know better, strains credibility.

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.

For the reasons stated herein, the administrative law judge finds that the evidence establishes that the claimant was discharged for misconduct in connection with her work. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$732.00.

**DECISION:**

The representative's decision dated April 20, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be 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. The claimant is overpaid unemployment insurance benefits in the amount of \$732.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tpn/kjw