

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOM G OROMO
Claimant

APPEAL NO. 08A-UI-00842-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/23/07 R: 02
Claimant: Respondent (2)

Section 96-5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 15, 2008, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on February 7, 2008. The claimant participated. The employer participated by Ms. Billie Sieperda, loss prevention manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from April 29, 2007, until December 18, 2007, when he was discharged from employment. Mr. Oromo was employed as a part-time cashier and was paid by the hour. Mr. Oromo was discharged after a fellow cashier complained to the company that Mr. Oromo was intentionally failing to scan some items being purchased by another associate. Ms. Billie Sieperda, of the company's loss prevention department, personally reviewed the security video tapes of the transaction in question and personally observed Mr. Oromo failing to scan items of a higher value for the associate that was purchasing items. When a company management worker inadvertently mentioned the investigation to Mr. Oromo while he was proceeding, the employer believes that the claimant made threatening gestures to the cashier who had complained.

It is the claimant's position that he did not fail to scan items.

REASONING AND CONCLUSIONS OF LAW:

The evidence in this case is disputed. The administrative law judge, having heard the testimony of the witnesses and having considered the record as a whole, is of the opinion that the

employer has sustained its burden of proof in establishing Mr. Oromo was discharged under disqualifying conditions. The evidence in the record establishes that the matter was brought to the attention of company management by a fellow cashier who had personally observed the claimant engaging in conduct that the cashier clearly felt was a violation of company policy. In an effort to determine whether the complaint was justified, Ms. Sieperda personally observed the security video tape of Mr. Oromo and the transaction in question. Ms. Sieperda testified under oath that she carefully reviewed the tape and personally observed Mr. Oromo failing to scan certain higher-priced items of the purchases being made by the other Wal-Mart employee. The evidence establishes that a checker is aware if the item being scanned has registered by a tone that is sounded at the checkout station.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. Unemployment insurance 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 was overpaid benefits in the amount of \$690.00.

DECISION:

The representative's decision dated January 15, 2008, reference 02, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$690.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw