

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

CECILIA SMITH  
323 W 8<sup>TH</sup> ST S  
NEWTON IA 50208

WAL-MART STORES INC  
C/O FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

CECILIA SMITH  
829 E 7<sup>TH</sup> ST N  
NEWTON IA 50208

Appeal Number: 05A-UI-00650-HT  
OC: 12/12/04 R: 02  
Claimant: Appellant (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness  
Section 95.2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Cecilia Smith, filed an appeal from a decision dated January 5, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 3, 2005. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Store Manager Lee Stump. Exhibits D-1 and One were admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Cecilia Smith filed a claim for unemployment benefits with an effective date of December 12, 2004. A disqualifying decision was issued on January 5, 2005, and sent to her address of record. She received the decision on January 8, 2004. The decision notified her any appeal must be postmarked or otherwise received by the Appeals Section by January 15, 2005. However, that was a Saturday and the following Monday was a holiday, so the due date was January 18, 2005. The appeal was faxed from her local Workforce Center on January 20, 2005.

The claimant was in the hospital beginning January 10 and was released on January 14, 2005. She contacted her local Workforce Center on January 19, 2005, to ask about the appeal and was told to come in and her appeal would be faxed, and she came in the next day.

Ms. Smith was employed by Wal-Mart from November 17, 2003 until December 9, 2004. She was a full-time cashier. The claimant was seen on a video tape taking money from the cash register. The loss prevention department was contacted and Ms. Smith was interviewed. She acknowledged taking small amounts of money from her cash register beginning in September, and the total was approximately \$50.00. She wrote a statement admitting this and agreed to make restitution. Assistant Manager Rod Kroeger notified her she was discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did receive the decision in a timely manner and knew the date on which a appeal had to be filed. However, she was in the hospital for approximately five days immediately afterward, and filed her appeal two days late. The administrative law judge feels the claimant should be allowed this small amount of extra time to file an appeal since the claimant was incapacitated for more than half of the ten-day appeal period.

The next issue is whether the claimant is disqualified. The judge concludes she is.

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.

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 has admitted to theft of cash from the employer. This is a violation of criminal law, company policy and is conduct not in the best interests of the employer. She is disqualified.

DECISION:

The representative's decision of January 5, 2005, reference 01, is affirmed. Cecilia Smith is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs