

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GABRIELLE ANDERSON
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 14A-UI-11118-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/28/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated October 15, 2014, (reference 01), which held that Gabrielle Anderson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Assistant Manager Brandon Rice. Employer's Exhibits One through Three were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from May 23, 2011, through September 30, 2014, when she was discharged for repeated violation of company policy. She received her first written coaching on October 27, 2011, for attendance. The employer issued a second level coaching for attendance on December 21, 2013; and she received a third level coaching on September 19, 2014, for four door errors. A door error is any item identified at the exit door for which a customer was overcharged or undercharged. The next step in the progressive disciplinary policy after a third level coaching is termination. Subsequent to the final warning, the claimant had six additional door errors. She had one on September 22, two on September 23, one on September 27, and two final errors on September 29, 2014.

The claimant filed a claim for unemployment insurance benefits effective September 28, 2014, and has received benefits after the separation from employment in the amount of \$579.00. The claims representative submitted written documentation for the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

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 duties and obligations to the employer. See 871 IAC 24.32(1). The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 30, 2014, for repeated policy violations. She knew that her job was in jeopardy but continued to make careless scanning errors. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied accordingly.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received \$579.00 in unemployment insurance benefits. The benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the discharge. The information provided was of the quantity and quality that, if unrebutted, would be sufficient to result in a decision favorable to the employer. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$579.00.

DECISION:

The unemployment insurance decision dated October 15, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$579.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs