

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA S GOREHAM**

Claimant

**APPEAL NO. 10A-UI-03645-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 02/07/10**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Melinda Goreham filed an appeal from a representative's decision dated March 2, 2010, reference 01, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on April 22, 2010. Ms. Goreham participated personally. The employer did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Ms. Goreham was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Goreham was employed by Wal-Mart from June of 2004 until February 8, 2010. She was last employed full time as a customer service manager, a position she held for approximately the last year of her employment. She was discharged because a register was not fully pulled on February 5.

When a register is pulled, the associate removes all money from the individual slots in the till. The associate is then to lift the till and remove any large bills and other items placed under the till by the cashier during the shift. On February 5, Ms. Goreham and an associate working under her were responsible for pulling registers. Both of their initials appeared at the top of the page identifying which registers were pulled. They each pulled registers separately. Items placed under the till had not been removed from one of the registers done by the other associate. As a result of the failure, Ms. Goreham was discharged on February 8. She was not given any other reason for the separation. She had been coached approximately one year earlier because of the same infraction.

**REASONING AND CONCLUSIONS OF LAW:**

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. Goreham was discharged because an associate working under her failed to fully pull a register. The employer did not participate in the hearing to explain how the error was attributable to Ms. Goreham.

Even if Ms. Goreham was held responsible for the error because she was the associate's manager, the evidence failed to establish that the failure was deliberate or intentional. At most, it represented an act of negligence. Negligence constitutes disqualifying misconduct only if it is so frequent that it manifests a substantial disregard for the employer's interests or standards. 871 IAC 24.32(1). Ms. Goreham had been coached one year previously for not pulling all money from a register. Two incidents of negligence over the course of one year are not so frequent as to represent a substantial disregard for the employer's standards.

It was well within the employer's prerogative to discharge Ms. Goreham. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated March 2, 2010, reference 01, is hereby reversed. Ms. Goreham was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css