

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

**RICHARD D WILLIAMS**  
**1112 “A” AVE NW**  
**CEDAR RAPIDS IA 52405**

**WAL-MART STORES INC**  
**c/o TALX UC EXPRESS**  
**PO BOX 283**  
**ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-04367-CT**  
**OC: 03/21/04 R: 03**  
**Claimant: Respondent (2)**

**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 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 6, 2004, reference 01, which held that no disqualification would be imposed regarding Richard Williams' separation from employment. After due notice was issued, a hearing was held by telephone on May 11, 2004. The employer participated by Kelly Moore, Co-Manager, and Jenny Ressler, Personnel Manager. Exhibits One through Five were admitted on the employer's behalf. Mr. Williams did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Williams was employed by Wal-Mart from October 21, 2000 until March 19, 2004. He was last employed full time as a stocker in the bakery department. He was discharged for attempted theft.

One of Mr. Williams' duties was to put new bar code stickers on day-old bakery products for sale at a reduced price. On March 18, he placed a bakery bar code on a magnifying glass used for Game Boy games. The bakery bar code showed a sale price of \$.90. The price marked on the shelf for the magnifying glass was \$7.97. Mr. Williams placed the bakery bar code directly over the original bar code on the magnifying glass. He then used a self-service scanner to ring up his items and a Wal-Mart shopping card to pay for his purchases. In addition to the magnifying glass, he purchased two cartons of pop at \$3.38 each and a bottle of pop for \$1.07. The receipt for his purchases (Exhibit Four) indicates that the magnifying glass rang up as a reduced bakery item for \$.90. He also paid \$1.25 for bottle deposits for the pop purchases.

When Mr. Williams attempted to leave the store with his purchases on March 18, the alarm sounded. He had failed to deactivate the code on the magnifying glass, which caused the alarm to sound. When the magnifying glass did not appear on his receipt, he was sent back to make the appropriate payment. When confronted by the employer, Mr. Williams stated that one of the stickers he had been using in the bakery must have inadvertently become stuck on the magnifying glass. He had no explanation as to how the sticker just happened to cover the original bar code on the item. Because of this theft, Mr. Williams was discharged on March 19, 2004.

Mr. Williams has received a total of \$729.00 in job insurance benefits since filing his claim effective March 21, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Williams was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Williams was discharged for attempted theft from his employer. The explanation he provided the employer was not credible. It seems unlikely that the bakery sticker would accidentally land on the magnifying glass in such a way as to totally cover the original bar code. Moreover, Mr. Williams certainly would have been able to see the sticker marked "bakery" as he was scanning the item and would have known that it did not come from the bakery. Furthermore, the combined price for the items he was purchasing exceeded the \$10.37 he initially paid. His pop purchases alone, with bottle deposits, totaled \$9.08. He knew that the addition of \$7.97 for the magnifying glass would have caused his total to be substantially more than \$10.37. Therefore, even if the bakery sticker was accidentally on the magnifying glass, Mr. Williams knew when he made the purchase that he was being undercharged. His failure to correct the problem at the scanner was contrary to the type of behavior the employer had the right to expect.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving that Mr. Williams was discharged for attempted theft, which constitutes a substantial disregard of the employer's interests and standards. It is concluded,

therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Williams has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated April 6, 2004, reference 01, is hereby reversed. Mr. Williams was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Williams has been overpaid \$729.00 in job insurance benefits.

cfc/kjf