

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABE L CAMP
Claimant

APPEAL NO. 13A-UI-00683-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/16/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores Inc. filed a timely appeal from a representative's decision dated January 10, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 14, 2013. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Amy Garstang, Assistant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Abe Camp was employed by Wal-Mart Stores Inc. from December 17, 2007 until December 13, 2012 when he was discharged from employment. Mr. Camp was most recently employed as a full-time tire/lubrication manager and was paid by the hour. His immediate supervisor was Megan Schlemire.

Mr. Camp was discharged from his employment with Wal-Mart Stores Inc. on December 13, 2012 for violation of the company's strict policy which prohibits employees from selling or using any used parts or components. Under the policy employees are prohibited from selling used parts to customers or using used parts in the repair of customer vehicles. All employees are aware of the policy and are aware that the policy is strictly enforced and that a similar violation can result in a termination from employment.

On or about December 13, 2012 Mr. Camp directed a company repair technician to retrieve two discarded used tires from a discarded tire container and instructed the technician to mount the tires on the car of a customer. It appears that Mr. Camp's intention was to donate the tires to the customer because the customer could not afford to buy four new tires for his vehicle.

The service technician immediately recognized Mr. Camp's directive as being a serious policy violation and refused the directive. Although aware of the technician's refusal and the reason for it, Mr. Camp nonetheless then directly ordered the technician to comply with his directive and the technician did so. The technician subsequently reported the matter to company management and the matter was investigated.

A decision was made to terminate Mr. Camp from his employment because of the serious nature of the policy violation and the potential for liability issues for the company. The company discharged Mr. Camp believing that his actions were contrary to company policy and "wrong."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence in the record establishes that Mr. Camp was aware of the company policy which strictly prohibits company employees from using or selling any used parts, tires or other components to customers for automobiles that are being repaired at the Wal-Mart facility. The claimant was also aware that violation of the strict policy could result in termination on the first offense. The evidence also establishes that Mr. Camp was reminded of the policy when he directed a technician to violate it and the technician initially refused to do so citing the company policy. Mr. Camp then knowingly ordered the technician to comply and placed used tires of the wrong size on the customer's car subjecting Wal-Mart Stores to potential liability. At the time of discharge Mr. Camp confirmed his violation of the established company policy was wrong.

There being no evidence to the contrary the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's separation from employment took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 10, 2013, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is

otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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