

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WARREN LAWRENCE**  
Claimant

**APPEAL NO: 11A-UI-02712-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/16/11**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated February 22, 2011, reference 01, which held that Warren Lawrence (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 March 30, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Assistant Managers Brian Becker and Jason Dennis. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**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 associate from November 2, 2010 through January 8, 2011 when he was discharged for repeated insubordination and inappropriate conduct. He arrived at work on January 8, 2010 around 5:00 p.m. and asked Assistant Manager Brian Becker if he would sit in with him so the claimant could speak with cashier Betty. The claimant and Betty had been residing together and had been having serious problems. Mr. Becker asked the claimant if it was work related and the claimant indicated that it was personal. Mr. Becker told the claimant he needed to do that off the clock, off the property and by phone.

The claimant ignored that directive and immediately approached Betty by her locker at 5:04 p.m. He confronted her and moved towards her three times invading her personal space, as witnessed by surveillance cameras and two co-employees. The claimant then went to the front of the store where he approached Sergeant Butler of the Des Moines Police Department.

Sergeant Butler was working for the employer while off duty for the police department. The claimant demanded to know the eviction procedures but he soon became angry with Sergeant Butler and threatened to have his badge. The claimant pointed his finger in Sergeant Butler's face and told him he had an attorney. Sergeant Butler told the claimant to step back and advised him this would not be done while at work and if the claimant could not follow those directives, he would be arrested. The claimant continued to stand there and shout at Sergeant Butler and Sergeant Butler finally told the claimant he either needed to leave or to go to work.

The claimant proceeded to register 19 and began to loudly complain so the associates and customers could hear what was happening. After a customer complaint, the employer pulled the claimant into the assistant manager's office to discuss the situation. The claimant was upset when he stepped into the office and he was aggressively talking to Customer Service Manager Scott. Mr. Becker told the claimant to sit down and calm down but the claimant proceeded to yell and got into Mr. Becker's face. The claimant finally sat down and admitted to confronting Betty, Sergeant Butler and discussing it in front of customers. He was discharged at that time.

The claimant filed a claim for unemployment insurance benefits effective January 16, 2011 and has received benefits after the separation from employment.

#### **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 the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on January 8, 2011 for repeated insubordination and inappropriate conduct. He disobeyed several directives and confronted a co-employee and a police officer who was working at the store and then created a general disturbance while he was working. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

While it does not appear the claimant used profanity, his conduct was most assuredly confrontational and disrespectful. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated February 22, 2011, 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 he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css