

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELLY L THURMAN**  
Claimant

**APPEAL NO. 12A-UI-06366-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 04/29/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated May 21, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided a telephone hearing was held on June 25, 2012. Claimant participated. Although duly notified the employer did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Shelly Thurman was employed by Wal-Mart Stores, Inc. from February 2010 until May 2, 2012 when she was discharged from employment. Ms. Thurman was employed as a part-time customer service representative and was paid by the hour.

The claimant was discharged based upon what the employer considered to be improper cash handling. On April 27, 2012, Ms. Thurman became ill at work and was taken to the hospital by ambulance. An initial count of the claimant's cash drawer showed \$150.00 to be missing. Subsequently, the employer determined that \$150.00 had been located in a different part of the cash register mechanism where it had apparently become dislodged during operation.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. of Appeals 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record does not establish intentional or disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Claimant was taken by ambulance to the hospital on April 27, 2012 during the middle of her work shift. The employer initially thought that \$150.00 was missing but subsequently the \$150.00 was found dislodged in a portion of the cash register mechanism. The evidence in the record does not establish that the claimant was at fault or that the claimant intentionally mishandled company funds. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 21, 2012, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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