

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

BRANDI L OMEARA
710 E 18TH ST APT H7
CARROLL IA 51401

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

Appeal Number: 05A-UI-07590-RT
OC: 06-19-05 R: 01
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated July 15, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Brandi L. Omeara. After due notice was issued, a telephone hearing was held on August 11, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Karrie Kallhoff, Store Manager for the employer's store in Carroll, Iowa, where the claimant was employed, participated in the hearing for the employer. David Mohr, Assistant Manager-Trainee was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. Employer's Exhibits 1 through 4 were admitted into evidence. The

administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibit's 1 through 4, the administrative law judge finds: The claimant was employed by the employer as a part-time cashier for approximately 6 months until she was discharged on June 17, 2005. The claimant averaged between 28 and 32 hours per week. The claimant was discharged for violating the employer's discount policy. The employer has a specific employee discount policy as shown at Employer's Exhibit 1. This is available to the claimant online by computer and the claimant also received training about the policy when she was hired. The policy provides that only employees and their eligible dependants can use the discount card. On or about May 31, 2005, the claimant allowed a friend, not a dependant, to use her discount card. The claimant admitted the behavior and received a coaching for improvement form, as shown at Employer's Exhibit 2, for this violation. A little more than two weeks later, the claimant made two separate purchases of items as shown at Employer's Exhibit 3 using her employee discount card. The purchases, however, were paid for by someone other than the claimant, and not a dependant. At first the claimant denied this, but she later conceded that she had done so to both the employer's witness, Karrie Kallhoff, Store Manager, and David Mohr, Assistant Manager-Trainee, as shown at Employer's Exhibit 4. Pursuant to her claim for unemployment insurance benefits filed effective June 19, 2005, the claimant has received no unemployment insurance benefits. Iowa Workforce Development records show no weekly claims and no payments.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not, because she has received no such benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witness, Karrie Kallhoff, Store Manager in the employer's store in Carroll, Iowa, where the claimant was employed, credibly testified, and the administrative law judge concludes, that the claimant was discharged on June 17, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. Kallhoff credibly testified that on two different occasions the claimant violated the employer's discount policy. Employees are allowed to purchase items at a discount, but the employer has a discount policy, as shown at Employer's Exhibit 1, limiting the use of the discount or the discount card to the employee and eligible dependents. On May 31, 2005, the claimant let a friend use her discount card and she was given a coaching for improvement form as shown at Employer's Exhibit 2. Slightly more than two weeks later the claimant violated the policy again by making two purchases, as shown at Employer's Exhibit 3, using her discount, but the purchases were paid for or intended to be for others, not dependents. The claimant admitted this violation and was discharged. Because the employer has clear policies providing for the proper use of its employee discount and because the claimant violated the procedure twice in just a little more than two weeks, the administrative law judge concludes that the claimant's violations of the employer's discount policy were deliberate acts constituting a material breach of her duties and obligations arising out of her contract of employment and evince a willful or wanton disregard of the employer's interest and, at the very least, are carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about June 17, 2005, and filing for such benefits effective June 16, 2005. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

DECISION:

The representative's decision of July 15, 2005, reference 01, is reversed. The claimant, Brandi L. Omeara, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. Since the claimant has received no unemployment insurance benefits she is not overpaid any such benefits.

dj/kjw