

**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**

**ROSALIE A CRAFT
2309 GRANDVIEW BLVD
SIOUX CITY IA 51104**

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

**Appeal Number: 04A-UI-12702-DWT
OC: 10/17/04 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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's November 17, 2004 decision (reference 02) that concluded Rosalie A. Craft (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2004. The claimant participated in the hearing. Brent Moore and Scott Caldwell appeared on the employer's behalf. 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 12, 2003. She worked as a full-time sales clerk. The employer's rules inform employees that if an employee commits theft, she can be discharged.

The claimant shares a locker with another employee. Sometime prior to October 14, 2004, the claimant took \$115.00 of her co-worker's money out of their shared locker. The claimant did not have permission to take this money. The claimant's co-worker did not report this missing money right away.

On about October 14, the claimant took \$100.00 that belonged to her co-worker out of their shared locker. The claimant did not have permission to take this money. Since this was the second time the co-worker had her money taken, she reported both incidents to the employer.

After reviewing a tape of the locker room, the employer determined the claimant was the last person in the locker before the co-worker's \$100.00 was discovered missing. The employer talked to the claimant about the missing money on October 15. The claimant admitted she had taken \$100.00 and \$115.00 from the locker without her co-worker's knowledge or permission. The claimant considered her actions as borrowing money from her co-worker. During the October 15 conversation, the claimant also admitted she had removed some of the employer's merchandise from the store without paying for it.

On October 15, 2004, the employer discharged the claimant for theft. The employer considered the claimant to have stolen merchandise she admitted she had taken and for taking money that belonged to her co-worker.

The claimant established a claim for unemployment insurance benefits during the week of October 17, 2004. She filed claims for benefits for the weeks ending October 23 through December 11, 2004. She received her maximum weekly benefit amount of \$261.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known her job would be in jeopardy if she took the employer's merchandise without paying for it and for taking money out of her locker that belonged to her co-worker without her co-worker's permission. The claimant admitted she took \$215.00 from her co-worker without permission. The claimant's actions amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 17, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 23 through December 11, 2004. She has been overpaid a total of \$2,088.00 in benefits she received for these weeks.

DECISION:

The representative's November 17, 2004 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 17, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 23 through December 11, 2004. She has been overpaid and must repay a total of \$2,088.00 in benefits she received for these weeks.

dlw/smc