

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

TWILA L RIESSEN
3714 STONE AVE
SIOUX CITY IA 51106

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

AMENDED
Appeal Number: 05A-UI-07088-CT
OC: 06/12/05 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 Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated June 28, 2005, reference 01, which held that no disqualification would be imposed regarding Twila Riessen's separation from employment. After due notice was issued, a hearing was held by telephone on July 28, 2005. The employer participated by Stacy Garver, General Manager. Exhibits One through Four were admitted on the employer's behalf. Ms. Riessen did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Riessen was employed by Sam's Club, a division of Wal-Mart, from June 15, 1993 until June 9, 2005. She was last employed full time as receiving area manager. She was discharged as the result of complaints from three vendors regarding their interactions with her on May 25, 2005.

On June 1, the Frito-Lay delivery person notified the employer that Ms. Riessen refused to accept extra freight on May 25. She did not have the authority to refuse the freight. She asked the delivery person if he thought Sam's Club was the Frito-Lay warehouse. Also on June 1, Dugan, a shipping company, complained that Ms. Riessen would not allow their delivery person to unload when he arrived two hours earlier than scheduled. He had one pallet, was already backed into the dock and, offered to unload it himself. Ms. Riessen directed him to leave and return at his scheduled time. On June 2, the employer received a complaint from Rocky Mountain Chips that Ms. Riessen had directed their delivery person to move his product two feet from where he had stored them. There was no legitimate reason for the directive. All three vendors complained that Ms. Riessen was rude in her dealings with them. As a result of the complaints, she was discharged on June 9, 2005.

Prior to the discharge, Ms. Riessen had been disciplined on two occasions. She received a written warning on March 15, 2004 because she insisted on speaking with an associate about work matters during the associate's break. The associate had told her she did not want to talk during her break. The employer considers break time to be an associate's own time and they cannot be forced to discuss work issues during that time. Ms. Riessen was given a "decision-making" day on June 11, 2004 based on an allegation that she was spreading rumors and making veiled threats. The specifics of the conduct are unknown.

Ms. Riessen has received a total of \$668.00 in job insurance benefits since filing her claim effective June 12, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Riessen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It is concluded that Ms. Riessen's conduct of May 25, 2005 is sufficient to establish disqualifying misconduct. She had no authority to decline the extra freight from Frito-Lay. She then rudely questioned the delivery person as to whether he thought Sam's Club was a warehouse for Frito-Lay products. Ms. Riessen refused to accommodate the Dugan delivery person who arrived ahead of his scheduled time. Since the driver was already at the dock and was willing to unload his one pallet himself, allowing him to unload would not have impacted Ms. Riessen's employees or operations. Ms. Riessen made the Rocky Mountain Chips delivery person move his product two feet away from where he originally placed them and had no legitimate reason for doing so.

The administrative law judge doubts that any of the vendors would have discontinued business with Sam's Club as a result of Ms. Riessen's conduct. However, such conduct could strain the business relationship between the employer and its vendors. The administrative law judge

concludes that Ms. Riessen's rudeness to three separate vendors on May 25 constituted a substantial disregard of the standards she knew or should have known were expected of her as a manager. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

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.

Ms. Riessen has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 28, 2005, reference 01, is hereby reversed. Ms. Riessen was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Riessen has been overpaid \$668.00 in job insurance benefits. However, \$334.00 of this overpayment has been set up on a different issue, leaving a remaining overpayment of \$334.00 on this issue.

cfc/kjf/pjs