

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

PATRICIA A MCGRATH
1027 - 5TH AVE SE
CEDAR RAPIDS IA 52403-2413

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

Appeal Number: 06A-UI-01961-RT
OC: 01-15-06 R: 03
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 February 6, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Patricia A. McGrath. After due notice was issued, a telephone hearing was held on March 7, 2006, 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. Adrienne Kindhart, Assistant Manager of the employer's store in Cedar Rapids, Iowa, where the claimant was employed, participated in the hearing for the employer. Employer's Exhibits One through Three

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 Exhibits One through Three, the administrative law judge finds: The claimant was employed by the employer as a full time cashier from October 29, 2002 until she was discharged on October 13, 2005. The claimant was discharged for falsification of an employment document when she was hired namely her application for employment. On October 16, 2002, the claimant completed the employer's application for hire and to the question whether the claimant had been convicted of theft or fraud or a violent crime, the claimant answered "no." Three years later the employer learned that the claimant had been arrested and charged with forgery from a newspaper article in the Cedar Rapids Gazette. This article appeared on October 12, 2005. The employer then immediately ran a background check on the claimant which showed a conviction for theft in the first degree, a Class C felony, as shown at Employer's Exhibit Two. The claimant was sentenced to ten years in prison for this. The claimant was then discharged. Had the claimant answered the question truthfully on her application for hire the employer would, at the very least, have conducted a thorough investigation of the charges against the claimant. Pursuant to her claim for unemployment insurance benefits filed effective January 15, 2006, the claimant has received unemployment insurance benefits in the amount of \$1,090.00 as follows: \$218.00 per week for five weeks from benefit week ending January 21, 2006 to benefit week ending February 18, 2006. All of these benefits were applied against an overpayment from 2001 and 2002 leaving a remaining balance overpaid of \$2,369.19.

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.

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).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The employer's witness, Adrienne Kindhart, Assistant Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on October 13, 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. Kindhart credibly testified that the claimant was discharged for falsification of her application for hire. On October 16, 2002, the claimant filled out an application for hire with the employer answering "no" to the question whether she had been convicted of a theft or fraud or violent crime. The employer did not learn until three years later that the claimant had been convicted of theft in the first degree, a Class C felony, as shown at Employer's Exhibit Two and that she was sentenced to ten years in prison. The claimant was then discharged. The employer only learned of the conviction three years later because an article appeared in the newspaper, Cedar Rapids Gazette, on October 12, 2005 indicating that the claimant had been arrested and accused of forgery. The employer then immediately ran a background check and discovered the conviction for first degree theft and the claimant was discharged.

The administrative law judge concludes that the claimant willfully and deliberately made a false statement on her application for hire or work. The claimant was convicted of first degree theft, a Class C felony, and sentenced on June 1, 1994 to ten years in prison. One who spends prison time for a criminal offense would not thereafter forget that criminal offense. The administrative law judge further concludes that this deliberate and willful false statement did or could result in endangering the health, safety, or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in

jeopardy. Clearly, someone who has been convicted of theft in the first degree, a Class C felony, has potential to commit additional theft especially from a retail employer such as here. Finally, the Supreme Court of Iowa has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Clearly, such a misrepresentation on a job application as here is materially related to job performance in a retail store. Further, the administrative law judge concludes that the statement is material because the employer would have, at the very least, changed its position on the claimant and conducted an investigation into the conviction had the claimant answered truthfully. Accordingly, the administrative law judge concludes that the claimant's false statement on her application of hire was 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 unemployment insurance benefits in the amount of \$1,090.00 since separating from the employer herein on or about October 13, 2005 and filing for such benefits effective January 15, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 6, 2006, reference 01, is reversed. The claimant, Patricia A. McGrath, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$1,090.00. Workforce Development records also show a current overpayment of an additional \$2,369.19.

kkf/tjc