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

Appeal Number: 06A-UI-01936-RT
OC: 01-01-06 R: 01
Claimant: Appellant (1)

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.

WENDY L FIFERLICK
143 AVE C
FORT DODGE IA 50501

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

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Wendy L. Fiferlick, filed a timely appeal from an unemployment insurance decision dated February 7, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 7, 2006, with the claimant participating. Steve Kopf, Co-Manager of the employer's store in Fort Dodge, Iowa, where the claimant was employed, participated in the hearing for the employer, Wal-Mart Stores, Inc. Vicky Ruby, Head Customer Service Manager, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Employer's Exhibits One through Five were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment

insurance records for the claimant. This appeal was consolidated with appeal number 06A-UI-01937-RT, for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Five, the administrative law judge finds: The claimant was employed by the employer, most recently for one-and-a-half to two years as a customer service manager, from November 14, 1998 until she was discharged on December 29, 2005. The claimant was discharged for violation of two employer's policies regarding the return of a coat that the claimant had purchased from the employer. On December 9, 2005, the claimant paid for a coat that she had on lay away. The claimant paid $39.94 for the coat. On December 26, 2005, the claimant noted that the coat had gone on clearance meaning it was on sale for $29.00. The claimant attempted to return the coat and obtain the difference between what she had paid and the clearance price or a difference of approximately $10.94. As the claimant was attempting to return the coat and then obtain the discount, she was told that the coat was at 75 percent discount or 75 percent off the cost of the coat. In attempting to obtain the 75 percent discount the claimant herself had to override the transaction. The claimant could do so since she was a customer service manager. The claimant then paid $9.99 for the coat.

The employer has two policies that prohibits some of the claimant's behavior. First, the employer has a policy that provides that when a purchased item goes on clearance or on sale, the purchaser has 14 days to come into the employer's store and obtain the difference between the price paid and the clearance price. The claimant paid for her coat on December 9, 2005. December 24 would have been the 15th day. However, the claimant did not attempt to get the clearance price until December 26, 2005, 16 days or 2 additional days beyond the employer's policy. The claimant was aware of the policy and further had had appropriate training in the policy as shown at Employer's Exhibit Five. The employer also has a policy that prohibits an employee from overriding a transaction for that employee's purchase. Rather, the employee should seek out another manager to override the transaction. The claimant also was aware of this policy and had appropriate training in this policy as shown at Employer's Exhibit Five. The claimant violated both of these policies. The claimant's statement admitting the violations appears at Employer's Exhibit Four. The claimant also knew that she was not entitled to the 75 percent discount as shown by the statement by the district loss prevention officer, Albert Brady, at Employer's Exhibit Two. When the employer learned of these violations the claimant was discharged as shown at the exit interview at Employer's Exhibit One. The claimant also received a coaching for improvement for attendance on November 22, 2005 as shown at Employer's Exhibit Three. There were no other reasons for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on December 29, 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. The employer's witness, Steve Kopf, Co-Manager of the employer's store in Fort Dodge, Iowa, where the claimant was employed, credibly testified that the claimant was discharged for violating at least two employer's policies on December 26, 2005. On that date, the claimant attempted to return a coat that she had purchased on December 9, 2005 in the amount of $39.34, in order to obtain the clearance or sale price of the coat at $29.00, a difference of $10.94. However, the employer has a policy that an item that goes on clearance can only be returned for the clearance price within 14 days of the purchase. The claimant attempted to return the coat on December 26, 2005 after purchasing it on December 9, 2005 which would be 16 days. The claimant testified that she was aware of the policy. While attempting to obtain the return the claimant took a 75 percent discount on the coat resulting in a payment of only $9.99 for the coat. This was even much less than the clearance price. In obtaining that price the claimant had to override the transaction in the employer's cash register or computer. The employer also has a policy that prohibits an employee from overriding a transaction when that employee is making the purchase. The claimant was also aware of this policy.

Because of the claimant's full awareness of the policies and because the claimant had been a customer service manager between one-and-a-half and two years, and should have known better, the administrative law judge is constrained to conclude the claimant's acts were

deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of an employer's interests and are disqualifying misconduct. The claimant's knowledge of the policies and admission to the acts appear in her own statement at Employer's Exhibit Four and in the written statement of the employer's district loss prevention officer, Albert Brady, which appears at Employer's Exhibit Two. Employer's Exhibit Five demonstrates that the claimant had received the proper training on these policies. Although not particularly relevant because the coaching for improvement is for attendance, the administrative law judge notes that the claimant received a coaching for improvement on attendance on November 22, 2005 as shown at Employer's Exhibit Three. Although attendance is not the reason for the claimant's discharge, the administrative law judge notes that the claimant had received a warning for her attendance slightly more than one month before the transaction on December 26, 2005. The claimant was on notice that she needed to watch her conduct at the employer's. It is true that the claimant was an employee for the employer for over seven years and a customer service manager for one-and-a-half to two years but this is all the more reason for the claimant to meticulously follow the employer's policies and she did not.

The administrative law judge also concludes that the claimant was aware that she was not entitled to the 75 percent discount. This is demonstrated in the statement by Mr. Brady at Employer's Exhibit Two. The claimant now testifies that she did not know that she was not entitled to the 75 percent discount and this is confirmed by her statement. However, because of the claimant's position with the employer and long term employment, before the claimant took any such large discount the claimant should have been fully and completely satisfied that she was entitled to the discount. The claimant did not herself bother to check out the discount. Accordingly, the administrative law judge concludes that the claimant was aware that she was not entitled to the discount and this is also disqualifying misconduct. Even if the claimant had innocently taken the discount, the claimant's other violations of the employer's policy as noted above are still disqualifying misconduct.

In summary, and for all of the reasons set out above, 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.

DECISION:

The representative's decision of February 7, 2006, reference 01, is affirmed. The claimant, Wendy L. Fiferlick, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct.

kkf/tjc