

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MONTIE R LEWIS

Claimant

APPEAL NO. 08A-UI-04346-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 04-06-08 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from an unemployment insurance decision dated April 25, 2008, reference 01, that allowed benefits to Montie R. Lewis. After due notice was issued, a telephone hearing was held May 28, 2008 with Co-Manager Angie Hansen participating for the employer. Mr. Lewis did not provide a telephone number at which he could be contacted.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Montie R. Lewis was employed as a truck unloader by Wal-Mart Stores, Inc. in Newton from August 14, 2007 until he was discharged April 4, 2008. On or about April 2, 2008, Mr. Lewis and a co-worker were sent to Ames to assist in the opening of a new store. The two employees traveled together in Mr. Lewis' vehicle. Both employees, however, requested mileage reimbursement from the Ames store. Mr. Lewis was present but silent when the co-worker requested mileage reimbursement.

Co-Manager Angie Hansen of the Newton store learned of these events on April 4, 2008. Mr. Lewis was discharged on the same date for not speaking up when his co-worker made a false claim for mileage reimbursement.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

The evidence in this record establishes that Mr. Lewis was a tacit accomplice in a co-worker's fraudulent application for mileage reimbursement. This was an act contrary to the interest of Mr. Lewis' employer. Benefits are withheld. There has been no overpayment because Mr. Lewis has not requested any benefits.

DECISION:

The unemployment insurance decision dated April 25, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/css