

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

KRISTY L TIMMERMAN  
BOX 442  
DICKEYVILLE WI 53808

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

Appeal Number: 05A-UI-11191-RT  
OC: 10/02/05 R: 12  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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 October 21, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Kristy L. Timmerman. After due notice was issued, a telephone hearing was held on November 15, 2005, with the claimant participating. Peggy Timmerman the claimant's mother, was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary. Victoria Althoff, Co-Manager of the employer's store in Dubuque, Iowa, where the claimant was employed, participated in the hearing for the employer. Employer's Exhibit 1, was 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 witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a cashier from August 12, 2003 until she was discharged on May 4, 2005. The claimant was discharged because she purchased alcohol from the employer for an underage minor coworkers. On May 1, 2005, the claimant was in the employer's store but not working. She was telephoned by another employee of the store, a cashier who was under age, and asked to purchase some alcoholic beverages for the underage cashier employee. The underage cashier employee was also at the time not working. The claimant did so knowing that the under age employee cashier was under age and that her acts were illegal. The employer learned of this from another cashier and confronted the claimant, who admitted her behavior. The employer also confronted the under age employee cashier who also admitted the behavior. No criminal charges emanated from this transaction. The employer has numerous policies addressing this behavior as shown at Employer's Exhibit 1. The claimant either received a copy of these policies or read them and they were available to the claimant at all times on the computer. The claimant had never been accused of this behavior before nor had she ever received any relevant warnings.

Pursuant to her claim for unemployment insurance benefits filed effective October 2, 2005, the claimant has received unemployment insurance benefits in the amount of \$220.00 as follows: \$55.00 per week for four weeks, from benefit week ending October 8, 2005 to benefit week ending October 29, 2005.

#### 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).

The parties agree, and the administrative law judge concludes that the claimant was discharged on May 4, 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 facts are really not in dispute. On May 1, 2005, the claimant purchased alcoholic beverages for an under age minor. Both were employees of the employer but not at work at the time. The claimant did so with knowledge that the person for whom she was buying the alcoholic beverages was under age and further that the act was illegal. The claimant even conceded that she knew that she should not have done so and that she knew she could lose her job but she was just not thinking about that at the time. The administrative law judge does not believe that the claimant was not thinking about this at the time. She was a cashier and fully aware of the employer's policies prohibiting such transactions as shown at Employer's Exhibit 1. The administrative law judge believes that at all material times hereto the claimant was fully aware of her actions and that she should not be doing it and that they were illegal and that it could cost her her job. The claimant testified that she was not aware of the employer's policies at the time but again this is not credible. The claimant signed acknowledgements as shown at Employer's Exhibit 1. Further, she had been a cashier for almost two years and should have been fully aware of the employer's policies concerning the sale of alcoholic beverages. The administrative law judge does not believe that it makes any difference here that the claimant was a customer and not a cashier at the time of the purchase. Clearly, it would be easier for the claimant, who would be known by other employees and cashiers, to purchase alcoholic beverages and then provide them to an under age minor. The administrative law judge is constrained to conclude that the claimant's behavior here was a deliberate act or omission constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. The administrative law judge concludes that what occurred here was far more than ordinary negligence in an isolated instance or a good faith error in judgment or discretion. The claimant knew what she was doing was wrong and illegal but did it anyway and it is no defense that she was not working at the time. Accordingly, 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.

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 \$220.00 since separating from the employer herein on or about May 4, 2005 and filing for such benefits effective October 2, 2005. 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 Iowa law.

DECISION:

The representative's decision of October 21, 2005, reference 01, is reversed. The claimant, Kristy L. Timmerman, 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 \$220.00.

dj/kjw