

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTORIA M MEEKS**

Claimant

**APPEAL NO. 11A-UI-14912-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 10/16/11**

**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge

Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 7, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 13, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Linda Kraber participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked as a pharmacy sales association from November 22, 2008, to September 15, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to report any criminal arrests or convictions for certain types of crimes, including crimes involving violence, within three days.

The claimant was convicted of felony child abuse in 2009, which was a crime that she was required to report to a supervisor. She willfully violated the employer's policy by failing to notify a supervisor about her conviction.

On September 11, 2011, a customer reported to an assistant manager that the claimant was a convicted felon. An investigation was conducted that confirmed the claimant had a felony conviction and had not reported the conviction to management.

On September 15, 2011, the employer discharged the claimant for failing to report her arrest and felony conviction.

The claimant filed for and received unemployment insurance benefits after filing her claim effective October 16, 2011.

After the hearing had concluded, the claimant called the Appeals Bureau at 9:00 a.m. and admitted she had not followed the instructions on the hearing notice that required her to call in and provide her telephone number.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue whether good cause has been shown to reopen the hearing. The unemployment rules provide that a hearing can be reopened for good cause, but if good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record. 871 IAC 26.8(5). The evidence fails to show the claimant had good cause for failing to participate in the hearing.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

871 IAC 24.32(8) provides: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." In this case, the failure to report the conviction was not discovered by the employer until September 11, 2011. As a result, even though the conviction was in 2009, the conduct must be considered a current act for the purposes of the unemployment insurance law.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated November 7, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs