

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL D MYRICK**  
Claimant

**APPEAL NO: 12A-UI-04545-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 03/25/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Rachel D. Myrick (claimant) appealed a representative's April 13, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 15, 2012. The claimant participated in the hearing. Allen Rye appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on March 31, 2007. She worked full time as a cashier at the employer's Mason City, Iowa store. Her last day of work was March 22, 2012. The employer discharged her on that date. The stated reason for the discharge was theft of a drink from a vendor.

The claimant went on a lunch break at about 1:00 p.m. She got some food in the store and took it to a food court area at a vendor's shop in the store. She filled a pop cup with a beverage and sat at a table in the food court while eating her food and drinking her beverage. She did not pay for the beverage before consuming it or leaving the food court at about 1:50 p.m.

The manager of the food vendor saw the claimant drinking what appeared to be an orange slush drink in a cup which was normally to be used for other beverages. Initially he was just concerned that the claimant had gotten the higher priced slush drink but had only paid for a

regular beverage. When the claimant came back to the area for her afternoon break at about 3:30 p.m., he confronted her and asked if she had gotten a slush drink for which she had not paid the difference; she denied she had gotten a slush drink. She did not acknowledge at that time that she had gotten a regular beverage but had not paid for it.

The vendor manager checked with his employees, who indicated that not only did the claimant not pay for a slush drink, she had not paid for any drink that day. The vending manager then reported the situation to the store's asset protection manager, Rye. Rye pulled up the available video surveillance and while he could not see at which dispenser the claimant filled her drink cup, he could see that she did not make any payment before leaving the food court, and he was able to see that she had disposed of the cup in the trash container in the employee lounge before returning to work. He was also able to see when the custodial staff had emptied the trash in the lounge before the claimant threw her cup away, and was able to see that no one other than the claimant threw away a cup from the vendor's shop after the trash was changed and before the trash was checked to retrieve the cup. When the cup was retrieved he personally observed that the cup contained remnants of an orange slush beverage, not tea, as asserted by the claimant.

The employer summoned the claimant for a discussion, during which the claimant acknowledged that she had gotten some tea from the vendor's shop but had forgotten to pay for it. The employer concluded that she was not being truthful about the beverage which had been in the cup, and therefore further concluded she was not being truthful about simply forgetting to pay for the beverage. As a result of this conclusion, the employer discharged the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

While the administrative law judge would have preferred to have had the first-hand testimony of the vendor's manager, the employer's witness Rye did have some first-hand information himself regarding what was visible on the video surveillance and his personal observations regarding

the retrieved beverage cup. While the submitted statement of the vendor's manager is hearsay, in this case it does substantiate the other first-hand testimony of Rye. The administrative law judge concludes that the employer has met its burden to establish by a preponderance of the evidence that the claimant had knowingly failed to pay for the beverage taken from the employer's food vendor.

The claimant's dishonesty in taking the beverage without paying for it shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's April 13, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 22, 2012. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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