

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAN N PHAM**

Claimant

**APPEAL NO. 07A-UI-09027-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 08/19/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated September 13, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 9, 2007. The claimant participated. The employer participated by Eugene (Skip) Carver, Assistant Manager.

**ISSUES:**

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from August 15, 2001 until July 19, 2007 when she was discharged for insubordination. Ms. Pham held the position of full-time sales associate and was paid by the hour. Her immediate supervisor was Janet Tomae.

The claimant was discharged for intentionally failing to follow work directives that were given to her on July 19, 2007 by the assistant manager, Eugene (Skip) Carver. On that date it had been reported that Ms. Pham was not in the fitting room area where she had been assigned to work. When Mr. Carver discovered the claimant “walking around” the store, he instructed the claimant to return to the fitting room area to perform her duties. After being instructed to return to the fitting room area, Ms. Pham responded, “I do not have to do what you tell me.” When Mr. Carver repeated his instructions, the claimant stated, “I do not have to listen to you.” When Ms. Pham indicated that she did not wish to do that job anymore, the claimant was warned by Mr. Carver that if she refused she would be discharged from employment. When the claimant continued to refuse to do the job that was assigned to her and failed to follow the reasonable work directive that was given to her by the assistant manager, she was discharged from employment.

Ms. Pham was aware that Mr. Carver was the assistant manager. Photographs and job titles of management individuals are displayed prominently in the work area.

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

The administrative law judge concludes, based upon the evidence in the record, that the employer has met its burden of proof in establishing that Ms. Pham was discharged for intentional disqualifying misconduct in connection with her work. The evidence establishes that Ms. Pham was aware that Mr. Carver held a management position with the company and the evidence establishes that Ms. Pham was familiar with the English language. On the day in question, the claimant was found to be out of her work area and specifically told to return to her work area by Mr. Carver, the store's assistant manager. Although Mr. Carver repeatedly instructed the claimant to return to her work area using simple language, the claimant continued to refuse stating that she did not have to listen to Mr. Carver's work instructions. The employer acted reasonably in issuing the claimant a final warning that she would be discharged if she did not follow the work instruction. Ms. Pham was discharged when she refused to follow the reasonable and work-related directive that was given to her by Mr. Carver.

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.

For the reasons stated herein, the administrative law judge finds the claimant was discharged for intentional disqualifying misconduct. Benefits are withheld.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,092.00.

**DECISION:**

The representative's decision dated September 13, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing the claimant meets all other eligibility requirements of Iowa law. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,092.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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