

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

THOMAS J SCHROEDER
56 POND VIEW CT
IOWA CITY IA 52240

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

Appeal Number: 05A-UI-06231-RT
OC: 05-15-05 R: 03
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, 4th 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.

(Administrative Law Judge)

(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 June 3, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Thomas J. Schroeder. After due notice was issued, a telephone hearing was held on June 30, 2005 with the claimant not participating. The claimant did not call in telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing as instructed in the notice of appeal. Jay Lowenberg, Assistant Manager, participated in the hearing for the employer. Employer's Exhibits One through Four

were 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 witness and having examined all of the evidence in the record, including Employer's Exhibits One through Four, the administrative law judge finds: The claimant was employed by the employer, most recently as a Deli Lead Associate, from October 7, 2003 until he was discharged on May 18, 2005. The claimant was discharged for attempting to return an old DVD player for a new one the claimant had just purchased. On May 11, 2005, the claimant purchased a new DVD player as shown at the first page of Employer's Exhibit Two. One day later, on May 12, 2005, as shown by the second page of Employer's Exhibit Two, the claimant returned the box containing the new DVD player but now containing an old DVD player which the claimant had acquired over one year ago. The employer did not even carry the old DVD player any longer. The old DVD player did not match the numbers on the box. Nevertheless the claimant obtained a full refund for what was supposed to be the new DVD player. The employer's policy on electronic refunds is to have an electronics associate review the refunded item. Samuel Ogeda, an Electronics Associate, reviewed the refunded item and noted that it was over one year old and no longer carried by the employer and the number did not match the box. He wrote a statement at Employer's Exhibit One. An investigation was then performed by loss prevention and a report was issued as shown at Employer's Exhibit Four. The claimant was confronted on May 18, 2005 and signed an admission stating that he had purchased a DVD player and returned an older model purchased a year earlier and received a refund. This statement also appears at Employer's Exhibit One. The employer has policies prohibiting such behavior and the claimant received training in appropriate business practices all as shown at Employer's Exhibit Three. Pursuant to his claim for unemployment insurance benefits filed effective May 15, 2005, the claimant has received no unemployment insurance benefits. Records show no weekly claims and no payments.

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. He 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 employer's witness, Jay Lowenberg, Assistant Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on May 18, 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. Mr. Lowenberg credibly testified that the claimant purchased a new DVD player from the employer and then one day later attempted to return an old DVD player he had acquired approximately one year ago as if it was the new DVD player he had just purchased. The claimant put the old DVD player in the box containing the new DVD player and returned it and got a full refund. The employer noticed the old DVD player. The old DVD player was no longer carried by the employer and did not match the numbers on the box. The claimant was confronted about this and admitted in writing that he had done so as shown at Employer's Exhibit One. The sales tickets at Employer's Exhibit Two confirm the claimant's actions. The report from the loss prevention officer at Employer's Exhibit Four also confirms the claimant's actions. The employer has a policy at Employer's Exhibit Three prohibiting such behavior.

The administrative law judge concludes that the claimant's exchange of an old DVD player purporting that it be a new DVD player was a deliberate act or omission constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he 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 no unemployment insurance benefits since separating from his employer on or about May 18, 2005 and filing for such benefits effective May 15, 2005. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

DECISION:

The representative's decision of June 3, 2005, reference 01, is reversed. The claimant, Thomas J. Schroeder, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

pjs/pjs