

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA S VEST**

Claimant

**APPEAL NO. 07A-UI-03089-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 02/17/08 R: 04  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's March 18, 2008 decision (reference 01) that concluded Pamela S. Vest (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate at the hearing. As a result, no one represented the claimant. John Weilandich, a co-manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 29, 2007. She worked as a part-time cashier. One of the duties as a cashier is to give gift cards to customers in the amount the customer pays for a gift card. On November 14 and December 18, 2007, the claimant rang up many gift cards for companies who give gift cards to employees for the holidays. On November 14, the claimant rang up 19 gift cards for \$100.00 a card. The claimant gave the customer 18 gift cards that had \$100.00 on the card. The claimant kept the last gift card for herself and gave the customer a blank card or one that did not have any money on it. On December 18, the claimant did the same thing.

In mid-January 2008, the company that purchased the gifts cards in November reported that one of the gift cards purchased that day did not have any money on it. The employer

investigated and learned the claimant was the cashier that completed the gift card transactions. When the employer talked to the claimant, she admitted she kept a gift card companies had for on November 14 and December 18. The claimant also acknowledged she used the two gift cards herself because of her financial situation. The employer discharged the claimant on February 21, 2008.

The claimant established a claim for benefits during the week of February 17, 2008. She filed claims for the weeks ending February 23 through March 29, 2008. The claimant received a total of \$798.00 in benefits during these weeks.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's actions with respect to gift cards she sold on November 14 and December 18, 2007, amount to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from her. The claimant committed work-connected misconduct. As of February 17, 2008, the claimant is disqualified from receiving benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 23 through March 29, 2008. The claimant has been overpaid and must repay a total of \$798.00 in benefits she received for these weeks.

#### **DECISION:**

The representative's March 18, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 17, 2008. This disqualification continues until she 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. The claimant has been overpaid and must repay a total of \$798.00 in benefits she received for the weeks ending February 23 through March 29, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css