

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH L CRAFF
Claimant

APPEAL NO: 10A-UI-00085-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/15/09

Claimant: Respondent (2/R)

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 December 21, 2009 decision (reference 01) that concluded Joseph L. Craff (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2010. The claimant participated in the hearing. Diana Barton appeared on the employer's behalf and presented testimony from one other witness, Craig Dean. During the hearing, Employer's Exhibits One through Four were 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?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 1990. He worked full time as receiving and unloading processor at the employer's Mount Pleasant, Iowa regional distribution center. His last day of work was December 1, 2009. The employer discharged him on that date. The stated reason for the discharge was falsification of production information.

The claimant was normally supposed to empty trailers at a particular dock where his production rate expectation was 90 cases per hour. On November 30 he stopped working on the trailer at his assigned dock at about 3:10 p.m., about 35 minutes before the end of his shift, but when the trailer was only about three-quarters unloaded. He then went and assisted a coworker at another dock who was unloading single item pallets until quitting time at 3:45 p.m. The normal production rate expectation for that dock's work was 500 cases per hour. On his production sheet for the day he indicated he had done 450 cases at his regular dock for five hours and had done 230 cases at the other dock for an hour. Normally when the claimant worked at other docks where the load was different from his 90 case per hour standard, he noted the different

rate on his production sheet for the day. On November 30, however, he did not make any distinction that the 230 cases were at the 500 per hour rate rather than the 90 per hour rate.

Another associate was concerned that the claimant was attempting to manipulate his production figures and reported this concern to Mr. Dean, the receiving dock operations manager. When Mr. Dean investigated and inquired of the claimant, the claimant admitted that he had seen that he "wasn't making rate and got a pallet of [the other associate's] trailer to make rate because I'm close to a step two [productivity warning] and needed more rate." The claimant had previously been given a step two warning on March 31, 2009 for not filling out production reports correctly. As a result of that prior warning and the employer's conclusion the claimant had intentionally manipulated his production report to make it appear that he had made rate, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective February 15, 2009. After the separation he reopened his claim by filing an additional claim effective December 6, 2009. The claimant has received unemployment insurance benefits after the separation.

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).

The claimant's provision of information intended to mislead the employer regarding his productivity 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.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's December 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 1, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css