

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

KRYSTLE D KELLY
409 N HANCOCK
OTTUMWA IA 52501

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

Appeal Number: 06A-UI-05143-HT
OC: 04/09/06 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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated May 3, 2006, reference 02. The decision allowed benefits to the claimant, Krystle Kelly. After due notice was issued, a hearing was held by telephone conference call on May 31, 2006. The claimant participated on her own behalf. The employer participated by Assistant Manager Tressa Grieger, Customer Service Manager Tracy Weillbrenner, and Cashier Pam Kappel.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Krystle Kelly was employed by Wal-Mart from

March 31, 2005 until April 13, 2006. She was a part-time cashier. At the time of hire, the claimant received a copy of the employee handbook and also successfully completed her computer-based learning courses about company policies. All employees are issued a discount card which may be used only by the employee, the employee's spouse, and minor children. The policy states misuse of the discount card may result in revocation of the card, coaching, or discharge. The level of the discipline depends on whether the employee was aware of the policy. If they were not, coaching is given, and if they were, discharge occurs.

On April 11, 2006, the claimant was shopping with her mother and their items were combined during the check-out scan. The claimant's mother wrote a check for all the items, which included the discount. Ms. Kelly was aware at the time this should not have been done but did not notify either the cashier supervisor or a customer service manager to rectify the situation. She intended to inform them "later."

The incident was reported to Assistant Manager Tressa Grieger by the cashier on the day it occurred. Ms. Grieger pulled the electronic records of the transaction as well as the check and determined the discount had been used and that the claimant's mother wrote the check on her own account. On April 13, 2006, the assistant manager met with Ms. Kelly and asked her about the transaction. The claimant admitted she knew the policy but had allowed her mother to write the check. She did not provide an explanation for not notifying a supervisor or manager to correct the transaction at that time, and she was discharged.

Krystle Kelly has received unemployment benefits since filing a claim with an effective date of April 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she 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 claimant was aware of the company policy regarding the use of the employee discount and knew the disciplinary consequences of violating it. She knew the policy had been violated as soon as the transaction on April 11, 2006, had occurred but made no attempt to notify the employer to correct the matter before leaving the store. Her assertion that she was going to tell someone "later" is not credible, especially as she did not mention this version of the events to the assistant manager at the time she was questioned.

The record establishes the claimant knowingly violated the company policy when she knew it could lead to discharge. This is conduct not in the best interests of the employer and the claimant is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 3, 2006, reference 02, is reversed. Krystle Kelly is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,530.00.

bgh/kjw