

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER ALLISON**  
Claimant

**APPEAL NO: 12A-UI-14059-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 10-28-12**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 16, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 2, 2012. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required. Jennifer Nefzger, Asset Protection Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time asset protection associate for Wal-Mart from July 18, 2012 to October 25, 2012. In September 2012 the employer began hearing rumors that the claimant was having a romantic relationship with an associate from the jewelry department. It interviewed the claimant and he denied having a relationship with an associate. The employer told the claimant if he was involved in a relationship with an associate it could move him to another position at the same or a higher rate of pay but the claimant continued to deny the relationship. On October 19, 2012, rumors were still flying around the store about the claimant having a romantic relationship with an associate in the jewelry department. The employer interviewed the claimant again and he denied the relationship at that time as well, with the full knowledge that if he was in a relationship with an associate the employer would move him to another position. The employer was not convinced after speaking to the claimant October 19, 2012, and asked the corporate office to investigate. The corporate investigation consisted of a corporate employee being assigned to check social media sites for evidence of a romantic relationship between the claimant and the jewelry associate. The corporate investigation discovered on Facebook that the claimant not only was having a relationship with the jewelry associate but they were in fact engaged. Their Facebook pages also contained intimate

pictures of the couple making it clear they were much more than friends. The employer met with the claimant October 25, 2012, and informed him of what had been found on Facebook and at that point the claimant admitted to the romantic relationship, stated it had been going on for quite some time and that he was engaged to the jewelry associate. The employer terminated the claimant's employment October 25, 2012, for violating its policy stating asset protection associates cannot have romantic relationships with any other employee in the store where he works (Employer's Exhibit Three). That policy is in place to protect both the store and asset protection employee because asset protection associates are responsible for monitoring the store for theft and shoplifting, among other duties, and if they engage in romantic relationships with another associate, the employer's property could be compromised if the asset protection associate would catch their romantic partner stealing from the employer for example.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Even if the claimant was unaware of the policy prohibiting romantic relationships with another associate, the employer made it clear to him when asking him about the rumors of his relationship both September 24 and October 19, 2012. The employer told him if he was involved with an associate he could be transferred to a different position within the store at the same, if not a greater, rate of pay. Despite these opportunities to notify the employer of his relationship and accept a transfer, the claimant chose to be dishonest about the situation until the employer confronted him with the Facebook evidence, at which time the claimant confessed to the relationship and indicated it was a long-term romance. The claimant's actions blatantly violated the employer's reasonable policy as to asset protection employees. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The November 16, 2012, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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