

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J RICHARDS
Claimant

APPEAL NO. 07A-UI-10384-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/07/07 R: 03
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 November 1, 2007 decision (reference 01) that concluded Cynthia J. Richards (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because she 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 November 28, 2007. 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 in the hearing. As a result, no one represented the claimant. David Chappell, 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 unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 8, 2004. The claimant worked full-time as a customer service manager.

During her employment, the employer talked, more than once, to the claimant about comments she made regarding co-workers. On May 9, 2007, the employer warned the claimant that talking about discipline another employee could receive with other employees was inappropriate.

In late September 2007, the claimant was in the associate lounge talking to a co-worker. An employee heard the claimant make a derogatory sexual remark about another employee, who was not in the lounge. The employee who heard the remark was offended by the claimant's

comment and reported the comment to the store manager. When the manager talked to the claimant, she acknowledged she made the comment. Although the claimant's job was not previously in jeopardy, the employer discharged the claimant for making an inappropriate sexual comment about an employee, which offended another employee. The employer discharged the claimant on October 5, 2007.

The claimant established a claim for unemployment insurance benefits during the week of October 7, 2007. She filed claims for the weeks ending October 20 through November 10, 2007. The claimant received her maximum weekly benefit amount of \$212.00 for each of 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).

Even though the employer's witness had no first-hand knowledge about the incident that led to the claimant's discharge, a preponderance of the evidence establishes the claimant made a derogatory sexual comment about another employee in the employee lounge. Since the claimant was a manager and had previously been told to watch what she said about other employees, the claimant's late-September comment amounts to an intentional and substantial disregard of the kind of behavior the employer had a right to expect from a manager. The claimant committed work-connected misconduct and is not qualified to receive unemployment insurance benefits as of October 7, 2007.

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 October 20 through November 10, 2007. She has been overpaid \$848.00 in benefits she received for these weeks.

DECISION:

The representative's November 1, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 7, 2007. 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 \$848.00 in benefits she received for the weeks ending October 20 through November 10, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css