

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY L KENNEDY
Claimant

APPEAL NO. 10A-UI-06990-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 04/04/10
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 30, 2010, reference 01, which held that no disqualification would be imposed regarding Danny Kennedy's separation from employment. After due notice was issued, a hearing was held by telephone on July 1, 2010. Mr. Kennedy participated personally. The employer participated by Freddy Collins, Supervisor; Kendra Reiss, Assistant Manager; Laura Schmitt, Human Resources Manager; Sean Boyle, Audit Team Leader; and Jonathan Whitver, Club Manager.

ISSUE:

At issue in this matter is whether Mr. Kennedy was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kennedy was employed by Wal-Mart from January 22, 2007 until April 8, 2010. He was last employed full-time as a center section associate. He was discharged for submitting false paperwork.

Mr. Kennedy was to submit a weekly "no movement" report for the areas assigned to him. He was to note all items for which there had been no sale during the prior week. He was also to note if there were items on the list that were not on the sales floor to be purchased. The weekly reports were spot checked by the audit team. On or about March 20, it came to the employer's attention that there were items that should be on the sales floor but were not. According to the "no movement" report filed by Mr. Kennedy, the items were on the floor. However, they were located still in stock.

As a result of the employer's findings on March 20, a more complete review was done on Mr. Kennedy's "no movement" reports. It was determined that he had submitted at least five reports that were false regarding items that were supposed to be on the floor but were not. He had been told by his supervisor to ask for help if he was unable to complete his reports. There

were three consecutive weeks in February and March in which he indicated that a video game was out for sale when it was not. He indicated that certain wines were out for sale when they were still in inventory. The same was true of envelopes and compact discs. As a result of the falsifications, Mr. Kennedy was discharged on April 8, 2010.

Mr. Kennedy filed a claim for job insurance benefits effective April 4, 2010. He has received a total of \$4,161.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Kennedy was discharged for providing false information to the employer. He was expected to review a detailed list that contained every item that should be on the sales floor in his areas of responsibility. Rather than seeking assistance so that he could complete the report accurately, he simply indicated that the items were on the sales floor without regard to whether they were or not.

The administrative law judge does not believe the omissions were the product of occasional oversights. This conclusion is based on the fact that he indicated the same video game was on the sales floor for three consecutive weeks. If he had actually been performing his job in the manner expected, he would have discovered that the game was not, in fact, out for sale. If he had been checking each item as required, he would have discovered the problem by the second week and certainly by the third week. For this reason, the administrative law judge concludes that he was deliberately failing to perform his job in the manner expected.

By not alerting the employer to the fact that items were not on the sales floor as expected, Mr. Kennedy deprived the employer of potential sales opportunities. A customer would probably assume that the store did not carry the item and make their purchase elsewhere. Mr. Kennedy knew or should have known, without benefit of prior warnings, that his conduct was contrary to the standards the employer expected of him. His actions had the potential of adversely impacting the employer's revenues and is, therefore, substantial misconduct warranting a denial of job insurance benefits.

Mr. Kennedy has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated April 30, 2010, reference 01, is hereby reversed. Mr. Kennedy was discharged by Wal-Mart for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Kennedy will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw