

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA K THOMAS
Claimant

APPEAL NO. 07A-UI-09419-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09-02-07 R: 04
Claimant: Respondent (2)

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 September 27, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 22, 2007. The claimant did participate. The employer did participate through Maria Green, Co-Manager. Employer's Exhibit One and Two were entered and received into the record.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a department manager full time beginning April 5, 2000 through September 6, 2007 when she was discharged for walking out during her shift.

On September 5, 2007, the claimant was working with a customer in the stores cellular phone area when she became upset because she did not know how to assist the customer appropriately. The claimant paged a manager to come and help her. When the manager did not respond to her page quickly enough, she became upset and began yelling at Brian Haselhoft when he arrived at her work area. After completing the business with the customer, the claimant told Mr. Haselhoft that she was too upset to continue working and she walked out of the store before completing her work shift. The claimant's work shift was to end at 4:00 p.m. and she left the store between 11:30 a.m. and 11:45 a.m.

The claimant had been previously reprimanded by Ms. Green for walking off the job before completing her shift. The claimant was told that she could not just leave the store without a manager's permission. Mr. Haselhoft did not give the claimant permission to leave early on September 5, 2007.

The claimant has received unemployment benefits since filing a claim with an effective date of September 2, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant had been warned previously about leaving work without permission before she completed her work shift. An employer cannot forcibly detain an employee who wants to leave the store. When the claimant told Mr. Haselhoft she was leaving he may have said ok, but he did not give her permission to leave. Mr. Haselhoft could not forcibly detain the claimant on the premises. The claimant knew or should have known from both the employer's handbook and her previous warning that leaving before completing the work shift without permission was conduct not in the employer's best interest. The claimant's leaving on September 5, without permission before the conclusion of her work shift constitutes disqualifying misconduct. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 27, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,425.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css