

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MUSA WORGE

Claimant

APPEAL NO. 09A-UI-03794-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01/11/09

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 24, 2009, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 6, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Sean Stewart participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as an in-stock associate from December 5, 2006, to January 10, 2009. The claimant was informed and understood that under the employer's work rules, insubordination was grounds for disciplinary action.

The claimant received a verbal warning in January 2007 for going through the checkout line before punching out for dinner. He received a written warning for failing to complete assigned work in January 2008. He also received a decision-making day for this same conduct in February 2008. He was informed that the next level of action was termination.

On January 10, 2009, the assistant store manager directed the in-stock team to go out into the parking lot to retrieve shopping carts. Everyone except the claimant complied with the directive. When the assistant manager informed the claimant that his job was in jeopardy due to his failure to retrieve the carts, the claimant continued to refuse stating the task was not part of his job. The assistant manager then discharged the claimant for willful refusal for following the instructions of his supervisor.

The claimant has received unemployment insurance benefits since he filed his claim effective January 11, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's refusal to follow his supervisor's instructions was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. This is especially true because the claimant had been warned that his job was in jeopardy. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 24, 2009, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise

eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css