

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>JESSICA M BENSON</b> Claimant  <b>WAL-MART STORES INC</b> Employer	68-0157 (9-06) - 3091078 - EI  <b>APPEAL NO. 10A-UI-09448-NT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b>   <b>OC: 06/06/10</b> <b>Claimant: Appellant (1)</b>
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Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated July 2, 2010, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on August 19, 2010. The claimant did participate. The employer participated Vicki Postpsil, Assistant Store Manager; Nicole Annis, Human Resource Department; and James Varney, Asset Protection Employee.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Jessica Benson was employed by Wal-Mart Stores from July 28, 2007 until June 10, 2010 when she was discharged for theft.

The claimant was discharged after she was observed on company security cameras obtaining redemption tickets for cans and bottles that were the property of Wal-Mart and providing the tickets to her husband who in turn redeemed them for cash.

It is the claimant's position that she was redeeming her own cans and bottles.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Here the evidence in the record establishes that the claimant was personally observed on company security tapes misappropriating company property and assisting in the conversion of redemption tickets so that Wal-Mart Stores could be defrauded out of cash funds. Although aware that the claimant maintains her innocence, the administrative law judge finds that the claimant's testimony strains credibility.

The claimant's acts of misappropriating company property and in assisting in the conversion of the property of cash for her own purposes was in willful disregard of the employer's interests and standards of behavior and caused the claimant's immediate discharge from employment for reasons that are disqualifying under the provision of the Iowa Employment Security Act.

**DECISION:**

The representative's decision dated July 2, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, providing that she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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