

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDI M FIELDS

Claimant

APPEAL NO. 08A-UI-02042-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 01/20/08 R: 01
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 18, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on March 13, 2008. The claimant participated. The employer participated by Eric Maslo, Acid Protection Manager. Exhibits One through Four were received into evidence.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 7, 2006 until January 25, 2008 when she was discharged for misappropriation of company property and funds. The claimant was employed as a part-time cashier and was paid by the hour.

Ms. Fields was discharged after security video tape showed the claimant allowing individuals that she was familiar with to purchase items far below their retail price. The surveillance video also showed the claimant was appropriating company funds. Ms. Fields initially denied the employer's allegations but subsequently admitted to misappropriation of company property and funds.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes the claimant was discharged for intentional disqualifying misconduct in connection with her work. It does. The evidence in the record establishes that the claimant was observed through video surveillance misappropriating company funds and merchandise and allowing individuals that

she was familiar with to purchase items far below their retail value. The claimant had no authorization to vary from normal cash handling procedures. Ms. Fields admitted to the misappropriation after being confronted by police authorities. (See Exhibit Four)

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for intentional disqualifying misconduct in connection with her work. Unemployment insurance benefits are withheld.

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. The claimant is overpaid benefits in the amount of \$984.00.

DECISION:

The representative's decision dated February 18, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, providing that she is otherwise eligible. The claimant is liable to repay \$984.00 in unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs