

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY J JACOBSON**  
Claimant

**APPEAL NO: 14A-UI-09499-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 08/10/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 4, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the October 2 hearing. Greg Bracey, the asset protection manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2012. Shortly after the claimant started his employment, he began taking the pop bottles and cans from the employee break room and turned them in for money. When the employer turned in the pop bottle and cans from the break room, the employer kept the deposit money for associate relations. The claimant kept the money he received from the pop bottles and cans he took.

Management did not learn the claimant was taking the pop bottles and cans from the employee break room until early August 2014. Bracey reviewed video and observed the claimant take pop bottles and cans from the break room. In early July, he also saw the claimant take two pairs of shoes that still had the price tag on them.

Bracey talked to the claimant about the money he received from the pop bottles and cans from the employee break room. The claimant told him that he had not known he could not keep the money he received for turning in pop bottles and cans from the employee break room. He had been doing this the majority of his employment. The claimant reported that he had taken shoes home and planned to give them to the church.

On August 13, the employer discharged the claimant for taking the employer's property without authorization. The claimant established a claim for benefits during the week of August 10, 2014. He has not filed any weekly claims.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented at the hearing, the claimant did not commit work-connected misconduct when he took pop bottles and cans from the employee break room. He had done this for more than a year and no one warned him that this was not permitted. When the claimant took shoes that still had the price tag on them, he committed work-connected misconduct. Without his explanation, the evidence establishes the claimant took these shoes without authorization. Based on this incident, the claimant committed work-connected misconduct. As of August 10, 2014, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's September 4, 2014 determination (deference 01) is reversed. The employer discharged the claimant for reasons consisting work-connected misconduct. As of August 10, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css