

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL ANN CLEGHORN
Claimant

APPEAL NO. 08A-UI-08741-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/29/08 R: 12
Claimant: Appellant (1)

Section 965(2)a – Discharge
Section 96.6(2) – Timeliness

STATEMENT OF THE CASE:

The claimant, Carol Cleghorn, filed an appeal from a decision dated July 30, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 15, 2008. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Market Asset Protection Manager Jeff Ward. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the claimant filed a timely appeal and whether she was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Carolann Cleghorn filed a claim for unemployment benefits with an effective date of June 29, 2008. She was disqualified in a decision dated July 30, 2008, which she received August 5, 2008. That same day she mailed an appeal to the Iowa Workforce Development Appeals Section, but it was never received.

At the end of September 2008, Ms. Cleghorn contacted the Appeals Section and was notified the appeal was not received. She was then given a fax number to use and faxed a second appeal on September 30, 2008.

Ms. Cleghorn was employed by Wal-Mart from March 14, 1999 until June 27, 2008 as a full-time customer service manager. On June 14, 2008, a customer came to Store Manager Rodney Brewer and said he had purchased a gift card for \$100.00, but he did not receive it. The matter was referred to the asset protection department and assigned to Jeff Ward. Mr. Ward reviewed the electronic journals for the time and date and check-out line the customer indicated he had used. There had been another item purchased and the employer looked for that information and then viewed the video surveillance recording of the transaction.

The company records were then checked to see whether the gift card had been spent by someone else and it had been redeemed at another Wal-Mart. A review of the video surveillance recording of that transaction showed the claimant redeeming the gift card. Ms. Cleghorn was questioned and stated a cashier gave her the card, saying she had found it in the garbage can. The claimant then checked to see whether there was any balance left on the card and when she discovered there was \$100.00, she spent it herself.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did file a timely appeal from the initial decision but it was not received by the Appeals Section through no fault of the claimant's. The appeal shall be accepted.

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 knowingly spent a gift card which she did not purchase. Just because it may have been found in a garbage can is not sufficient reason to spent it herself, as many things are inadvertently discarded every day. Instead of referring the matter to the store manager, or her direct supervisor, Ms. Cleghorn spent the gift card, knowing it was not hers and she had not been given it or bought it herself. This constitutes theft and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of July 30, 2008, reference 01, is affirmed. The claimant's appeal shall be accepted as timely. Carolann Cleghorn is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs