

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SPARKISHA DAVIS

Claimant

APPEAL NO. 09A-UI-05614-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/15/09

Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sparkisha Davis filed an appeal from a representative's decision dated April 2, 2009, reference 01, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on May 6, 2009. Ms. Davis participated personally. The employer participated by Nino Reyes, Assistant Manager. The administrative file was admitted as Exhibit I.

ISSUE:

At issue in this matter is whether Ms. Davis was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Davis was employed by Wal-Mart from April 8, 2008 until March 12, 2009. She was last employed full time as a merchandise supervisor. She was discharged because she sold merchandise that had been returned to the store.

On March 12, 2009, a customer returned a three-in-one travel system, which is an infant carrier and car seat. Ms. Davis found the unopened item on a cart in her department and took it to the "Claims" area. The customer who had returned the item then approached her and wanted to re-purchase it. Because it was the same customer who had just returned the item, Ms. Davis retrieved it from "Claims" and allowed him to purchase it. She was discharged the same day. The only other disciplinary actions against Ms. Davis concerned her attendance. The last warning regarding attendance was on March 10, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In order to sustain a disqualification from job insurance benefits, the

evidence must establish that the discharge was prompted by an act of misconduct. See 871 IAC 24.32(8). In the case at hand, it was the employer's contention that Ms. Davis was discharged for violating a policy that prohibited certain returned items from being sold.

The only policy the employer has provided refers to "Disposition of Deleted Modular Items." This policy only refers to display items and what can and cannot be done with them. The policy prohibits the sale of travel systems, car seats, and cribs that have been used as display items. It does not make reference to such items that have been returned to the store by customers. The item Ms. Davis allowed to be sold on March 12 was not a display item but one that had been returned to the store by a customer. For this reason, the administrative law judge concludes that Ms. Davis did not violate store policy on March 12.

Ms. Davis had been disciplined because of her attendance. However, the employer had determined that only a coaching was warranted for the attendance issues that were present before March 12. Therefore, it is concluded that her attendance was not a basis for discharge. Inasmuch as there was no act of misconduct on March 12, no disqualification is imposed.

DECISION:

The representative's decision dated April 2, 2009, reference 01, is hereby reversed. Ms. Davis was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css