

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DENICE A SCHIFFMAN  
303 E MISSION ST  
STRAWBERRY POINT IA 52076-9633

WAL-MART STORES INC  
c/o TALX UC EXPRESS  
P O BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04624-RT  
OC: 04/02/06 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Wal-Mart Stores, Inc., filed a timely appeal from an unemployment insurance decision dated April 20, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Denice A. Schiffman. After due notice was issued, a telephone hearing was held on May 16, 2006, with the claimant participating. Knut Brown, Assistant Manager of the employer's store in Independence, Iowa, where the claimant was employed, participated in the hearing for the employer. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time deli sales floor associate from November 7, 2005, until she was discharged on March 29, 2006. The claimant was discharged for integrity issues and a failure to properly and timely clean a deli slicer. The employer's deli slicer must be cleaned every four hours and then the person who cleans it is responsible for initialing on a spreadsheet that the cleaning was done. On March 26, 2006, the claimant initialed the spreadsheet for slicer No. 1 as if she had cleaned it at 4:30 p.m. This spreadsheet appears at Employer's Exhibit One. However, the claimant had not cleaned the slicer. At approximately 4:20 p.m. an associate cut her finger on the slicer. The slicer was not immediately cleaned at that time although it should have been because an associate had cut her finger on the machine. The associate was then taken to the hospital to have her finger attended to. The claimant did not clean the slicer at that time but continued to use it to slice meat for sale to the public. Eventually the claimant cleaned or sanitized the slicer, but not until she had used the slicer after the associate had cut her finger. The claimant received training as to when and under what circumstances the slicer was to be cleaned and how to appropriately clean the slicer. The claimant had received no prior warnings or disciplines or accusations of a similar nature. Pursuant to her claim for unemployment insurance benefits filed effective April 2, 2006, the claimant has received unemployment insurance benefits in the amount of \$870.00 as follows: \$145.00 per week for six weeks from the benefit week ending April 8, 2006 to the benefit week ending May 13, 2006. .

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on March 29, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Knut Brown, Assistant Manager at the employer's store in Independence, Iowa, where the claimant was employed, credibly testified that on March 26, 2006, despite initialing a log showing that slicer No. 1 had been cleaned at 4:30 p.m. as shown at Employer's Exhibit One, the claimant did not clean the slicer at that time. Basically, the claimant concedes that she did not clean the slicer at that time. Rather, the claimant testified that she had cleaned the slicer at approximately 4:00 p.m. but that she had not initialed the spreadsheet. Rather, the claimant testified that a co-worker initialed the spreadsheet at 7:00 p.m. using the claimant's initials and showing that the slicer was cleaned at 4:30 p.m. The claimant's testimony is simply not credible.

According to the claimant's testimony, the associate who initialed that the slicer had been cleaned cut her finger on the slicer at 4:20 p.m. This would be after the time when the claimant said she had cleaned the slicer at approximately 4:00 p.m. The associate was then taken to the hospital to have her finger attended to. The administrative law judge does not believe that the associate could have come back and initialed the cleaning of the machine showing that the machine had been cleaned at 4:30 p.m. by the claimant. The associate was not even in the employer's location at 4:30 p.m. and the administrative law judge is not convinced that the associate could have returned from the hospital by 7:00 p.m. More compelling, the associate cut her finger at 4:20 p.m. after the time the claimant said she had cleaned the machine but the claimant did not sanitize or clean the machine again despite the fact that the associate had cut her finger on the machine. The claimant even conceded that she did not immediately clean or sanitize the slicer after the associate cut her finger on it. In fact, the claimant even concedes that she continued to use the slicer to cut meat for sale to customers despite the fact that the machine was not cleaned after the associate had cut her finger on it. The employer provides training as to when and under what circumstances a slicer should be cleaned and how it should be appropriately cleaned and further that the slicer machine must be cleaned every four hours and the associates are expected to initial a spreadsheet indicating such cleaning. Even the claimant conceded that she was aware of most of these rules. However, at one point, the claimant testified that she did not know that the machine needed to be cleaned after the associate had cut her finger on it. This is absolutely not credible. By now, anyone in food

service should know of the problems of HIV (AIDS) and Hepatitis. Further, the employer provided training concerning when and under what circumstances to clean the machine including when someone cuts a finger on it and the claimant even conceded she attended the training. The claimant's testimony was also not credible because she could not remember specific things, such as if she had cleaned the machine after 4:30 p.m. but then later testified that she had sanitized it but not until after she had used it. It is also not credible that a co-worker would come back at 7:00 p.m. and initial that the claimant had cleaned the slicer at 4:30 p.m. using the claimant's initials. Even if that had occurred, the claimant must have been aware of it and she would have known that it was incorrect. At one point the claimant testified that she had told the associate that she had cleaned it at 4:30 p.m. but that was not correct even according to the claimant's testimony at the hearing.

The bottom line here is that the claimant failed to clean the deli slicer in a timely fashion even after an associate had cut her finger on the deli slicer but continued to use the deli slicer to slice meat to sell to the public and then later initialed the spreadsheet as if she had cleaned the slicer at 4:30 p.m. or perhaps had someone else initial the spreadsheet showing it had been cleaned by the claimant at 4:30 p.m. when it had not been cleaned. Such behavior shows a lack of integrity and a disregard for public safety. The administrative law judge further concludes that such behavior was a deliberate act constituting a material breach of the claimant's duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$870.00 since separating from the employer herein on or about March 29, 2006 and filing for such benefits effective April 2, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with provisions of Iowa law.

DECISION:

The representative's decision of April 20, 2006, reference 01, is reversed. The claimant, Denice A. Schiffman, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. The claimant is overpaid unemployment insurance benefits in the amount of \$870.00.

cs/kjw