

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RALPH R MARTIN

Claimant

APPEAL NO: 11A-UI-01327-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01/02/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 27, 2011, reference 01, that held he was discharged for misconduct on December 30, 2010, and benefits are denied. A hearing was held in Des Moines, Iowa on April 25, 2011. The claimant, and Attorney, Mark Sherinian, participated. Carol McCaslin, Loss Prevention Coordinator and Attorney, Todd West, participated for the employer. Employer Exhibits 1 – 7, and Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 22, 2006, and last worked for the employer as a part-time hourly associate on December 30, 2010. The claimant received the employer policies.

The employer accounting department submitted a 24-hour transaction report for December 23 to loss prevention on the following day that showed a register #2 cash shortage of \$88.05. Loss Prevention Coordinator McCaslin reviewed a surveillance video on December 28 of associate activity for register #2. She observed claimant wait on a customer who remitted \$83.30 for payment. While placing the cash in his drawer, claimant placed a bill outside and to the left of his cash drawer near a printer. Later, claimant placed the bill in his back pocket. She was not able to determine the amount of the bill, but based on method payment, it was either a \$20 bill or a \$1 bill.

Employer representatives confronted claimant on December 30 with the allegation he took money as shown in the surveillance video. Claimant denied taking any money/bill(s), and he did not offer any explanation that he was refunding one dollar to himself for an earlier customer transaction.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on December 30, 2010, for theft.

Claimant's explanation for his conduct is not credible. He urges that he was reimbursing himself for money that he had advanced in an earlier customer transaction that is not consistent with the amount of that purchase, and the surreptitious manner he routed the bill into his back pocket. If the claimant was owed the dollar, he takes it immediately rather than routing it out of sight and then into his pocket.

Theft is a deliberate act contrary to the best interests of the employer, and it meets the definition of misconduct in connection with employment regardless of whether the person has previously been disciplined for any other offense or policy violation. Even if the theft amount was one dollar rather than a twenty dollar bill, it still constitutes job disqualifying misconduct.

DECISION:

The department decision dated January 27, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on December 30, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs