

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

SHAWNA M SINDT
1137 HIGH AVE E
OSKALOOSA IA 52577

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

Appeal Number: 05A-UI-05111-AT
OC: 04-17-05 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3- 7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from an unemployment insurance decision dated May 3, 2005, reference 01, which allowed benefits to Shawna M. Sindt. After due notice was issued, a telephone hearing was held on May 31, 2005 with Ms. Sindt participating. Co-Manager David Chappell participated for the employer. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shawna M. Sindt was employed by Wal-Mart Stores, Inc. from January 23, 2004 until she was discharged on April 17, 2005. She last worked as a photo technician. Ms. Sindt's supervisor, Brandi Gilchrist, was not at work on April 17, 2005. While off duty Ms. Gilchrist received an angry phone call from Ms. Sindt threatening to resign if Ms. Gilchrist did not intervene in a dispute between Ms. Sindt and a co-worker. Ms. Sindt had been unhappy at how the co-worker was performing her task. The conflict became so great that a manager on duty sent the co-worker to another location in the store. Ms. Sindt became angry because Ms. Gilchrist was unwilling to discuss the situation on her cell phone while she was away from the store.

The incident on April 17, 2005 was the culmination of similar incidents involving Ms. Sindt's relations with customers and co-workers. She had received a prior formal warning and informal counseling by her supervisor. Ms. Sindt has received unemployment insurance benefits since filing a claim effective April 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Sindt was discharged for misconduct in connection with her work. It does.

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).

Often misconduct is found in the inappropriate content of an individual's statements. It may also be found in inappropriate tone of voice or inappropriate timing of raising complaints. It may be found in arguments or in an unwillingness to take "later" for an answer. The evidence in this record establishes that Ms. Sindt was argumentative and harsh with her co-workers and her manager. The evidence establishes that this type of behavior continued despite warnings and informal counseling. The claimant knew or reasonably should have known that her tone of voice and her insistence on management dealing with her concerns immediately were actions contrary to the employer's interest. Benefits are withheld.

Ms. Sindt has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated May 3, 2005, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,105.00.

pjs/pjs