

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

MARY L CLARK  
905 JAY ST  
OTTUMWA IA 52501

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

Appeal Number: 05A-UI-05507-DWT  
OC: 04/10/05 R: 03  
Claimant: Respondent (1)

**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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's May 11, 2005 decision (reference 01) that concluded Mary L. Clark (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2005. The claimant participated in the hearing. Amy Reiner, Shelly Williams, and Stan McHawes appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for a current act of work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on December 14, 1998. The claimant worked full time as the frozen foods department manager. Dave Armstrong was the claimant's supervisor.

During the course of her employment, the employer gave the claimant a final written warning on August 16, 2004, for being disrespectful to a co-worker. The employer received information that the claimant referred to another employee as a "skank." The claimant and this employee did not get along. Although the employer gave the claimant the written warning, the claimant had not made any derogatory remark about another employee. Instead, co-workers overheard the claimant tell a co-worker how much she (the claimant) stank as a result of the work she had been doing.

On a Thursday night, February 17 or March 10, a friend and co-worker, S., asked the claimant if she would pick her up the next day because S.'s car was not working. The claimant did not know that around 10 p.m. on Thursday S. contacted the employer to report she was unable to work as scheduled on Friday. Since S. did not contact the claimant, she went to pick her up the next day. When S. did not come out of her home on Friday, the claimant knocked on her door. S. did not answer her door. As a result of going to pick up S. and then trying to get S. to answer her door, the claimant was late for work that Friday.

On February 23 or March 14, the claimant saw S. and told her that she (claimant) needed to talk to her. Although S. did not want to talk to the claimant, the claimant followed S. to the break room and asked S. why she had not contacted the claimant or answered her door the previous Friday morning. S. responded by telling the claimant that she was not her mother. The claimant persisted in trying to get S., her friend, to tell the claimant why she had not contacted the claimant the previous Friday. Both women engaged in a verbal confrontation. While the claimant raised her voice, S. swore at the claimant. S. did not ask any one to help her when she and the claimant were trading verbal barbs. Williams was in the break room and when she noticed the two employees appeared to be in each other's face, she had someone get Armstrong. When Armstrong arrived he had the claimant go back to work. The employer did not talk to the claimant again until April 1, 2005. On April 1, 2005, the employer discharged the claimant for violating the employer's policy about showing respect to co-workers and for engaging in a verbal confrontation in the break room with S.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established a business reason for discharging the claimant. Since the store manager did not participate at the hearing, it is not known why no one talked to the claimant about what happened between she and S. Also, it is not known why the employer waited over two to four weeks to discharge the claimant for the incident between the claimant and S. Regardless of whether the verbal confrontation occurred on February 23 or March 14, 2005, the verbal confrontation between the claimant and S. does not constitute a current act.

Also, while the claimant used poor judgment in trying to get S. to explain why she had not called the claimant when she did not need a ride to work, the facts do not establish that the claimant intentionally violated the employer's policy. The evidence does not indicate that S. received any discipline for swearing at the claimant. The facts indicate an isolated incident between friends who happened to work together occurred. This incident does not rise to the level of work-connected misconduct and does not disqualify the claimant from receiving unemployment insurance benefits. As of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's May 11, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. Therefore, as of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs