

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

BETH DAVIS
2294 WHITE PLAINS RD
MONTROSE IA 52639

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

Appeal Number: 06A-UI-01160-JTT
OC: 01/01/06 R: 04
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Claimant Beth Davis filed a timely appeal from the January 25, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 16, 2006. Ms. Davis participated. Co-manager John Weilandich represented the employer. Exhibits One through Five were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Beth Davis was employed by Wal-Mart as a full-time inventory control specialist from May 19, 2004 until January 3, 2006, when Co-manager John Weilandich discharged her.

The final incident that prompted the discharge occurred on January 2, 2006. Near the end of Ms. Davis' shift, Ms. Davis had gone to get a cart, when she noticed a male coworker sitting with his head down. Ms. Davis stopped to make certain that the coworker was okay, but then continued to chat with the coworker after ascertaining that he was okay. At 7:45 p.m., Mr. Weilandich observed Ms. Davis sitting and speaking with the male employee. Mr. Weilandich returned a short while later and asked the two employees whether they were taking a third, unauthorized break. Ms. Davis' shift was scheduled to end at 8:00 p.m. Ms. Davis finished speaking with the coworker at 8:00 p.m., then punched out and left the store. During Ms. Davis' shift the following day, Co-manager Weilandich summoned Ms. Davis to a meeting at which time he discharged her from the employment. The other employee received a lighter reprimand because he had no prior reprimands.

On February 14, 2005, the employer had reprimanded Ms. Davis for spending too much time wandering and not being productive. On May 28, 2005, the employer had again reprimanded Ms. Davis for not being productive. At the time of the incidents of non-productivity for which Ms. Davis was reprimanded, Ms. Davis was neglecting her work duties.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Davis was discharged for misconduct that would disqualify her for unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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

The evidence in the record establishes that Ms. Davis was negligent in the performance of her duties on January 2, 2006. The evidence further establishes that Ms. Davis had been similarly negligent on February 14, 2005 and on May 28, 2005. While the decision to discharge Ms. Davis from the employment based on these three incidents of unsatisfactory conduct and ordinary negligence was within the employer's discretion, the conduct that prompted the discharge did not rise to the level of substantial misconduct that would disqualify Ms. Davis for unemployment insurance benefits. The evidence in the record indicates that the reprimands occurred far apart from one another and that Ms. Davis had otherwise been sufficiently productive to continue in the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Davis was discharged for no disqualifying reason. Accordingly, Ms. Davis is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Davis.

DECISION:

The Agency representative's decision dated January 25, 2006, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/tjc