

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA L HUBBARD
Claimant

WALMART ASSOCIATES
Employer

APPEAL 22A-UI-06808-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/13/22
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 4, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2022. Claimant Amanda L. Hubbard participated and testified. Employer Walmart Associates participated through asset protection manager, Dynasty Salyers, and was represented by Kristin Blanding. Employer's Exhibits 1 – 6 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a claims associate from May 31, 2006, and was separated from employment on February 18, 2022, when she was discharged.

On February 4, 2022, employer became aware that claimant could be clocking in and out incorrectly. Ms. Salyers reviewed claimant's clock in and out times and security camera footage for a 30-day period. She discovered claimant typically clocked in when she entered the building, prior to placing her items in the breakroom and beginning work, and she frequently did not punch out at the correct times for breaks. She often began a break and then clocked out a few minutes later or did not clock out until entering her vehicle. (Exhibit 2) Employer asked claimant to explain how she clocked in and out. Claimant was unaware she was clocking in and out incorrectly and did not realize her break times were not accurate. (Exhibit 4)

Employer previously used a computer terminal in the store for employees to enter in and out times. Beginning in November 2021, employer changed to a system which required employees to clock in and out through an app on their cell phones. Claimant did not receive training during the daily meetings on the proper method to clock in and out using the app, because her job duties required her to be unavailable during the daily meetings. She received no other training regarding clocking in and out with the app on her phone.

Employer discharged claimant on February 18, 2022, for violating its timekeeping integrity policy. The policy prohibits falsifying time records that an employee knows is false. Claimant was aware of the policy.

Claimant received verbal warnings related to productivity concerns. She did not receive disciplinary action relating to timekeeping.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,812.00, since filing a claim with an effective date of February 13, 2022, for the ten weeks ending April 23, 2022. Employer submitted written documentation regarding claimant's separation from Iowa Workforce Development along with a copy of its pay policy and investigation documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

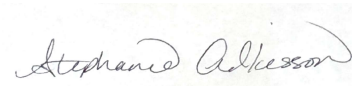
Here, claimant was aware of the policy prohibit the intentional falsification of timecards. However, she did not receive training regarding using the company app on her phone to clock in and out. Claimant was unaware that the way she was clocking in and out was not in compliance with company policy. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the manner in which she clocked in and out which led to separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Further, there was no evidence presented that any of the incidents alleged by the employer were intentional or were caused by claimant's carelessness which indicated a wrongful intent. This type of behavior does not rise to the level of misconduct.

Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

DECISION:

The March 4, 2022, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.



Stephanie Adkisson
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May 16, 2022

Decision Dated and Mailed

sa/ac