

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MICHAEL K ODLAND**  
Claimant

**APPEAL NO. 19A-UI-03222-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 03/24/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michael K. Odland, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated April 11, 2019, reference 01, which denied unemployment insurance benefits, finding that the claimant was discharged from work on March 25, 2019 for excessive unexcused absenteeism. After due notice was provided, a telephone hearing was held on May 8, 2019. Claimant participated and testified on his own behalf. Participating as a witness for the employer was Ms. Margret Boersma, Assistant General Manager. Department Exhibit D1, the administrative file, was admitted into the hearing record.

**ISSUE:**

The issue is whether the claimant was discharged for intentional work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having considered all of the evidence in the record, the administrative law judge finds: Michael Odland was employed by Walmart from April 26, 2018 until March 25, 2019, when he was informed that he was being discharged from the company. Mr. Odland was employed as a part-time lawn and garden associate and was paid by the hour. His immediate supervisor was Bret (last name unknown).

Mr. Odland was employed at the Walmart facility located in Waterloo, Iowa, but had moved to Newton, Iowa, and wished to transfer to the Newton, Iowa Walmart facility. Mr. Odland contacted the human resource department at the Waterloo, Iowa facility to inquire about the transfer policy. Mr. Odland indicated that he might miss some work at the Waterloo store because of the time needed to work out the details of his transfer at the Newton Walmart store.

Mr. Odland spoke to "Luella" in the company's Waterloo human resource department. In answer to his questions, Mr. Odland was told that he should properly call in to the Waterloo, Iowa facility to report any absences during the transfer process, but that any absences from work during the transfer process would not be "held against him". Mr. Odland called in to the Waterloo store each day that it was necessary for him to be absent due to the transfer process.

On March 25, 2019 Mr. Odland was at the Newton, Iowa store completing the process to transfer to that location. When a phone call was made to the human resource department at the Waterloo, Iowa store, "Luella" stated that his employment would continue at the Waterloo store until March 25, 2019. Later that day when Mr. Odland called the Waterloo facility to question about the transfer, he was informed by the "Luella" that he had been discharged by the decision of the store manager for excess absences because he exceeded the permissible number of infraction points allowed under the company's policy.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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 insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the claimant was discharged when he exceeded the permissible number of infraction points allowed under the employer's "no fault" attendance policy. Under the policy, employees assess one infraction point for each day's absence, one-half point for leaving early or arriving late, and assess two points for failure to report or notify the employer of the absence. When an employee reaches five points in six months, they are discharged. When they accumulate five infraction points, they are subject to discharge.

Here, Mr. Odland wanted to be given a transfer from working in the company's Waterloo, Iowa store to the company's Newton, Iowa store, because he had moved to that locale. In an effort to find out what procedures were required to facilitate the transfer, Mr. Odland spoke to a lady in the Waterloo, Iowa facility's human resource department that he believed had management authority. Mr. Odland testified that he was specifically told to call in each day's absence following the usual procedure and specifically told that during the transfer process, any absences that took place would not be "held against him".

Because the advice had come from a human resource department employee and seemed reasonable, Mr. Odland complied and properly called in each day. Later, after he was initially authorized to transfer through the human resource department of the Newton store and the Waterloo store had verified that he would continue to be employed at that facility until March 30, 2019, Mr. Odland was then informed that a decision had been made the manager of the Waterloo facility to discharge him from employment, because his recent absences had caused him to exceed the permissible number of infraction points allowed under the attendance policy.

The administrative law judge concludes that the claimant was discharged for no disqualifying reason. The claimant had relied upon the specific advice given to him by the Waterloo facility's human resource department and therefore, his absences during the transfer process are deemed excused and do not constitute disqualifying work-connected misconduct. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

A representative's unemployment insurance decision dated April 11, 2019, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs