

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANET L WALKER**

Claimant

**APPEAL NO. 13A-UI-01852-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 12/23/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated February 7, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 13, 2013. Claimant participated. The employer participated by Mr. Jeffery Bower, Assistant Manager, and Ms. April LeFebure, Personnel Coordinator.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Janet Walker was employed by Wal-Mart Stores, Inc. from January 26, 2008 until December 26, 2012 when she was discharged from employment. Ms. Walker most recently held the position of full-time bakery supervisor and was paid \$12.50 per hour. Her immediate supervisor was Derrick Chochlate.

Ms. Walker was discharged from her employment with Wal-Mart Stores, Inc. on December 26, 2012 when the claimant was unwilling to accept a demotion to the position of hourly deli associate at a substantial reduction in the claimant's hourly pay.

Ms. Walker had received low ratings on a company evaluation that had been given to her approximately September of 2012. The claimant had been marked down because she had not accomplished a number of duties that the employer believed were not being properly performed by the claimant. These duties included such things as inventory, cooler cleanliness and a sufficiency of merchandise, judgment and decision making by the claimant. When the claimant was unable to raise her evaluation scores following a second evaluation given 90 days later, the claimant was given the choice of taking a substantial reduction in pay and status or being discharged from her employment.

Ms. Walker believed that the change in position was a substantial change in the original agreement of hire and refused to accept the demotion. Ms. Walker had attempted to perform her duties to the best of her abilities as the bakery supervisor but her progress in meeting the employer's expected evaluation scores had been impeded by lack of staff and busy conditions during the seasonal sales rush. Ms. Walker had requested additional assistance in performing her duties, however, the employer was not able to provide the claimant any assistance due to staffing and funding issues.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of 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.

The employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate

decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.” When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the evidence in the record establishes that the claimant attempted to perform her duties to the best of her ability but her progress was impeded by a lack of staff and busy seasonal work conditions, the administrative law judge concludes that the evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant was not required to accept a disciplinary demotion that substantially changed the original agreement of hire. The employer’s attempt to demote the claimant was not based upon intentional, disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative’s decision dated February 7, 2013, reference 01, is affirmed. The claimant was discharged for non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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