

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTONIA HILL
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-00320-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
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 Participation in Fact-Finding

STATEMENT OF THE CASE:

Walmart Inc., the employer/appellant, filed an appeal from the November 25, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 5, 2021. The employer participated through Raymond Teasdale, manager and Liz Graeser, manager. Ms. Hill participated and testified. Employer's Exhibit 1 was admitted into evidence. Official notice was taken of the administrative record.

ISSUE:

Was Ms. Hill discharged for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hill began working for the employer on October 13, 2018. She worked as a part-time cashier. Her last day of work was September 21, 2020.

The employer's Sale of Alcohol Beverages Policy provides that "[n]o associate shall sell any alcoholic beverage product to underage or intoxicated persons, or otherwise be in violation of this policy or applicable Federal, state, or local law or regulation." Employer's Exhibit 1. The policy further provides that "[a]ge verification (using a method authorized [in the policy]) shall be required in connection with any retail alcohol beverage product purchase(s) by persons who reasonably appear to be under the age of 40 years for Walmart U.S. Facilities...." *Id.*

Regarding the potential consequences for violating the policy, the "Hiring, Employment and Training" section of the policy provides "[w]hen hiring or assigning an associate to a position which involves the sale of alcohol beverage products, a salaried member of management shall ensure the associate has taken...the applicable alcohol and age verification [classes, which] contain key information including...[i]nforming the associate the severe disciplinary

consequences, up to and including termination, may result from the associate's failure to comply with th[e] policy." *Id.* In that same section, the policy provides that "[a]n associate who fails to follow the corporate ID Policy for alcohol sales shall be disciplined up to and including termination." *Id.* The "Compliance" section of the policy provides that "[f]ailure to properly complete all alcohol beverage products sales procedures could result in disciplinary action up to and including termination..." *Id.* Ms. Hill was aware of the policy.

On September 16, 2020, unbeknownst to Ms. Hill, a person hired by the employer came through her cashier line to do an ID check. An ID check is when the person hired by the employer attempts to buy alcohol to test employees' compliance with the employer's Sale of Alcohol Beverages Policy. The employer conducts random ID checks about once a month. The person placed alcohol on the register. Ms. Hill scanned the alcohol and put it in a bag. The bag was in a bagging carousel. Ms. Hill turned the bagging carousel such that the bag that contained the alcohol was in front of the person. Ms. Hill clicked "yes" on the cash register screen that asked if the person had ID. Ms. Hill then asked the person for ID. The person responded that they have forgotten their ID in their car. Ms. Hill told the person that was okay but that the person could not buy alcohol. The person walked away to find a manager. Ms. Hill did not sell the person alcohol. The person walked away to talk with a manager before a sale could be made. Ms. Hill voided the products in the cash register.

At the end of her shift, Ms. Hill told Mr. Teasdale what had happened. Mr. Teasdale responded okay. Ms. Hill worked her next scheduled shifts on September 18, 19, 20 and 21. Toward the end of her shift on September 21, Ms. Hill was called in to the office. Mr. Teasdale told Ms. Hill that based on the employer's review of the video surveillance the employer concluded the Ms. Hill was going to make the sale and terminated her employment for violating the employer's policy.

Ms. Hill had been disciplined three times before this incident: June 2019, April 2020 and September 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Hill was discharged from employment for no disqualifying reason.

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). 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).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

In this case, Ms. Hill did not violate the employer's policy. The policy, in relevant part, prohibits employees from selling any alcoholic beverage product to underage persons and requires employees to ID any customer wishing to buy alcohol beverages who reasonably appear to be under the age of 40 years. It is undisputed that Ms. Hill asked the person connected to the employer who was doing the ID check for an ID. It is also undisputed that Ms. Hill did not, in fact, sell alcohol to the person. While the employer may have been dissatisfied with Ms. Hill's actions regarding the interaction with the person, Ms. Hill did not violate its policy. The employer has failed to meet its burden to establish misconduct. Benefits are allowed.

DECISION:

The November 25, 2020, (reference 01) unemployment insurance decision is affirmed. Ms. Hill was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 23, 2021
Decision Dated and Mailed

dz/scn