

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA R ERNST**  
Claimant

**APPEAL NO. 08A-UI-09950-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 09/21/08 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's October 16, 2008 decision (reference 01) that concluded Melissa R. Ernst (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2008. This appeal was consolidated for hearing with one related appeal involving another claimant, William Keehn, in appeal 08A-UI-09880-DT. Both claimants participated in the hearing. Elena Rocha appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, Ms. Ernst most recently started working for the employer on October 16, 2007. As of March 10, 2008, she worked full time as a service greeter in the employer's tire and lube express service at its Dubuque, Iowa store. Her last day of work was September 23, 2008. The employer discharged her on that date. The reason asserted for the discharge was violating the employer's romantic relationship policy.

The employer's policy prohibits a supervisor from engaging in a romantic relationship with someone subject to the supervisor's supervision. Ms. Ernst had not specifically been given a copy of the policy or had it explained to her that there was some reading of the policy that prohibited the subordinate from engaging in the relationship as well. Mr. Keehn was the service manager of the tire lube express; together with the service support manager he had some co-management over the claimant, although that did not extend to performance evaluations or monetary decisions.

The two had passing familiarity prior to the claimant transferring into the tire lube express in March 2008, but became better acquainted after that time. They discovered they shared an

interest in racing, which they attended together with other friends and family members. In about early September they mutually discovered that they might want their relationship to progress beyond mere friendship, and began discussion the potential of marriage. Mr. Keehn did inform the support manager of that possibility at that time.

On September 22 Ms. Rocha, the store assistant manager, approached Mr. Keehn on some other issues but also mentioned to him that another associate had made a comment about potential favoritism by Mr. Keehn toward Ms. Ernst, as they had been taking smoke breaks together and that day had gone to lunch together. After the discussion with Ms. Rocha, Mr. Keehn contacted the store manager and co-manager and told them that he and Ms. Ernst had recently determined that they wanted to become more than friends and had decided they were going to get married. The managers told Mr. Keehn that he and Ms. Ernst could not continue to work together; it was initially agreed that Ms. Ernst would be transferred into another department so she would not be under Mr. Keehn's supervisor. However, the managers did inform Mr. Keehn that a further response might be forthcoming from the area human resources manager. On September 23 the area human resources manager informed the store managers that both Ms. Ernst and Mr. Keehn needed to be discharged. The two claimants were married on November 1.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the alleged violation of the policy against romantic relationships. First, the employer has not established that the claimant either had meaningful notice of the policy or that the policy clearly applied to the subordinate.

Further, while the administrative law judge understands the purpose of the policy is to prevent even the potential of claims of sexual harassment, there is no evidence of actual harm to the employer's interests in this case. To the extent there was the potential for further problems had the claimant continued to work in the same department as Mr. Keehn, that problem could have been addressed and prevented by the transfer of one of them to another department. The employer has not established that the claimant's involvement in the relationship was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good-faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's October 16, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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