

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY J FORD

Claimant

APPEAL NO. 10A-UI-05262-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

Original Claim: 08/16/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sherry Ford filed a timely appeal from a representative's decision dated March 30, 2010, reference 03, which denied benefits based upon her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on May 5, 2010. Ms. Ford participated personally. Participating on behalf of the claimant was Mr. Joseph G. Basque, attorney at law at Iowa Legal Aid Society. Although duly notified of the time, the place, and the issues, the employer indicated they would not be participating. The employer had declined to participate in discovery. Claimant's Exhibit One was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Sherry Ford was employed by Wal-Mart Stores, Inc. from April 3, 1996, until March 10, 2010, when she was discharged from employment. Ms. Ford held the position of part-time audit team member and was paid by the hour. The claimant's immediate supervisor was Stephen Scheid.

The claimant was discharged after she failed to clean up a liquor spill using the method required by the employer. While performing her duties as an audit team member, the claimant and other team members noted what appeared to be a leak in a cardboard box of liquor at the employer's facility. Further investigation showed that one of the bottles of "vodka" had been broken in the box and some residue had leaked onto the floor.

Based upon the training that had been provided to Ms. Ford and her reasonable understanding of the employer's expectations, Ms. Ford secured the area and assisted in cleaning up the residue of liquor on the floor. The claimant's immediate supervisor, Mr. Scheid, and other team members did not indicate in any manner that Ms. Ford was following an improper procedure.

Based upon the claimant's understanding of the hazardous material requirements, the nature of the spill, and its absence from a hazardous material chart in the work area, Ms. Ford believed that she was following the correct procedures. Subsequently, the claimant was informed that she had not follow the correct procedures and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ford was discharged for misconduct in connection with the employment. 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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment 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 App. 1992).

Allegations of misconduct 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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record in this matter establishes that Ms. Ford believed, based upon the training that had been given to her, that she was following the proper procedure in cleaning up a liquor spill on the company's floor. The claimant had checked a hazardous materials chart and did not find liquor to be included. The claimant's supervisor and other workers did not indicate in any manner that she was following an improper procedure. Based upon the training and information available to the claimant, Ms. Ford reasonably believed that she was following the correct procedure and did not intentionally violate the employer's interests or standards of behavior. The claimant's discharge was therefore for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 30, 2010, reference 03, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw