

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHIRLEY L RICHARDSON**  
Claimant

**APPEAL NO. 15A-UI-03934-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 03/15/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Shirley Richardson (claimant) appealed a representative's March 25, 2015 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 8, 2015. The claimant participated personally. The employer participated by Eric Oeth, General Assistant Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 6, 2013, and at the end of her employment she was working as a full-time cashier. The claimant signed for receipt of the employer's handbook on July 6, 2013. The employer has a policy that states if an employee has four infractions she will be terminated.

On April 2, 2015, the employer issued the claimant a written warning for poor customer member service because two customers complained about the claimant within two hours. This is because the claimant questioned one customer when signatures did not match on her WIC package and the customer became upset. The other customer did not like it when the claimant would not price match an item not in a current advertisement. The employer was unaware of any action the claimant took that was incorrect. The employer liked the claimant's diligence. The employer notified the claimant that further infractions could result in termination from employment.

On July 7, 2014, the employer issued the claimant a written warning for poor member service. A customer needed to process a return and the claimant was not trained to handle this process. The customer service counter was closed, managers were not responding to the claimant's calls for assistance, the customer refused to process the return at the self-service register, and

another customer was waiting. The customer yelled and complained. When the manager finally arrived, the claimant reported to the manager, per policy, that she had gone over the end of her shift. The employer notified the claimant that further infractions could result in termination from employment.

On August 9, 2014, the employer issued the claimant a written warning for poor business judgment. She was eating candy at her register when the policy allows only water at the register. Some managers allow their favorite workers to eat candy and other food at the registers. Usually the claimant's managers allowed her to eat candy at her register. That day the manager did not. The employer notified the claimant that further infractions could result in termination from employment.

Sometimes customers forgot their bags on the carousels at the register. On or about February 13, 2015, the employer initiated a new policy requiring all cashiers to spin the carousel and make sure the bags are in the customer's cart before the customer leaves the register. The claimant signed that she knew the policy. On March 5, 2015, at the start of her shift the claimant forgot to spin the carousel and a customer left a bag at the register. She took the bag to the service desk where it was logged in. On March 12, 2015, the employer terminated the claimant for having four infractions in a year.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The employer issued the claimant a warning on April 2, 2014, but the employer could not describe what the claimant did wrong. The claimant received a warning on July 7, 2014, for poor customer member service. It appears the manager gave the claimant a warning when the manager made the customer wait too long. With regard to the warning on August 9, 2014, the claimant was not following the rules because the certain managers were allowing cashiers special treatment. At least one, if not all, of these three warnings, is suspect. The employer needs all of the incidents in order to terminate the claimant. On March 5, 2015, the claimant made a mistake and did not spin the carousel. She is at fault for not getting the customer the purchases. One mistake does not indicate deliberate or intentional misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 25, 2015, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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