

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATTRICIA A MAJORS
Claimant

APPEAL 16A-UI-02889-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/07/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 26, 2016, (reference 01) unemployment insurance decision that denied her benefits based upon her discharge from employment for job-related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2016. Claimant, Patricia A. Majors, participated personally. Employer, Wal-Mart Stores Inc., participated through Store Manager Dan McKinney and Asset Protection Manager Bill Hoffman.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a department manager when she was discharged. She had been employed from February 22, 2011 until February 2, 2016.

On January 29, 2016, claimant found a coat that was sitting on a cart that she uses. She asked a co-worker if they knew who the coat belonged to and they did not. She set the coat down and heard something jingle in the pocket. She picked the coat up and went through the pockets. She found two rings inside the pocket. At that time she recognized the rings as belonging to another co-worker named Patty Hensley. She put the rings in her front zipper pocket. She then took the coat and put it in the employee lounge.

Claimant tried to contact Store Manager Dan McKinney, however, he was in a closed door meeting. She then took the rings home with her. She did not contact Mr. Hoffman or any other manager or turn the rings over to lost and found.

The employer has a Code of Conduct and training videos that employees watch upon hire. These trainings instruct employees to turn lost and found property over to salaried managers or the lost and found department. Claimant knew that this was the policy.

On this same date, Ms. Hensley reported that her rings were missing. Ms. Hoffman reviewed the video tape of the receiving area where the coat was left. He observed claimant put the rings in her front zipper pocket on the video. Law enforcement was called to review the video and an officer eventually went to claimant's home and retrieved Ms. Hensley's rings.

Claimant had five previous written reprimands for her conduct on the job. One involved the misuse of her employee discount card. This written reprimand occurred in 2011. Claimant was discharged after Mr. McKinney and Mr. Hoffman's investigation was concluded on February 2, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was a discharge for job related misconduct. Benefits are denied.

As a preliminary matter, the claimant did not voluntarily quit, she was discharged from employment. Therefore, this must be analyzed as a discharge case.

It is my duty, as the administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). I assessed the credibility of the witnesses who testified during the hearing and considering the applicable factors listed above, and using my own common sense and experience, I find the Employer's versions of the facts more credible.

Iowa Code § 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).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant knew that it was against the employer's policy not to turn lost property over to salaried management; Mr. Hoffman; or the lost and found department. She intentionally left the premises with the rings knowing that this was against the employer's policy. She had several options available to her to turn the property over to either lost and found; Mr. Hoffman; Mr. McKinney or any other person on the salaried management team but chose not to do so. Her actions amount to intentional misconduct, even without prior warnings. As such, benefits are denied.

DECISION:

The February 26, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for job related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/pjs