

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMIKA L WILSON
Claimant

APPEAL NO: 10A-UI-09574-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/04/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's July 1, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on August 24, 2010. The claimant participated in the hearing. Prior to the hearing, the employer informed the Appeals Section that the employer was not participating in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. The claimant worked as a full-time stocker.

In September 2009, a co-worker reported to an assistant manager that the claimant used profane language to describe the co-worker. The claimant did not make any profane comment to the co-worker. Based on the co-worker's complaint, the employer discharged the claimant on September 7, 2009.

The claimant received a \$2,500.00 settlement from the employer during the first quarter of 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Using profane language to describe a co-worker at work could amount to work-connected misconduct. The facts in this case, however, do not establish that the claimant used profanity to describe a co-worker. Therefore, she did not commit work-connected misconduct. The employer may have had justifiable business reasons for discharging the claimant, but the facts do not establish that the claimant committed work-connected misconduct. As of April 4, 2010, the claimant is qualified to receive benefits based on this employment separation.

DECISION:

The representative's July 1, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not establish work-connected misconduct. Based on this employment separation, the claimant is qualified to receive benefits as of April 4, 2010, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs