

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY D GROSS

Claimant

APPEAL NO. 12A-UI-12398-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 09/23/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 10, 2012, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 8, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Seibold participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a bakery department manager from December 4, 2010, to September 24, 2012. The claimant had received a warning in April 2011 for allowing someone to use her discount card. She received a second warning in December 2011 for taking longer than her allowed break. She received a final warning in May 2012 for eating food from McDonalds in the bakery.

On September 23, 2012, the claimant took a call on her personal cell phone while she was still clocked in and standing in the bakery area. This was a willful violation of the employer's work rules, which prohibit using cell phones during work hours. An assistant manager witnessed this.

The employer discharged the claimant on September 24, 2012, for violating the cell phone policy, and after considering her past violations of company policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 10, 2012, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs