

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA F LOVERIDGE
Claimant

APPEAL NO: 11A-UI-10059-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/27/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Joshua F. Loveridge (claimant) appealed a representative’s July 21, 2011 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Wal-Mart Stores, Inc. (employer) After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on August 23, 2011. The claimant participated in the hearing; he was represented by his father and legal guardian, Fred Loveridge, who also testified on his behalf. The employer’s representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to participate 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.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on May 24, 2011. He worked part time as a deli worker at the employer’s Altoona, Iowa store. His last day of work was June 29, 2011. The employer discharged him on that date. The reason asserted for the discharge was insubordination.

The claimant is mentally handicapped, to the extent that he typically has a job coach from a human services agency present with him at all times while he is working. The employer had hired the claimant through a program seeking to provide employment opportunities to the mentally handicapped, and was aware of the claimant’s mental and behavioral issues. On June 29 the claimant’s supervisor at work criticized the way the claimant was cutting some bread, and he became frustrated and mad, an aspect of his mental disabilities. His job coach was absent that day, and so was not there to assist in redirecting the claimant, one of the intended functions of the job coach. The claimant “flipped off” his supervisor, called her some

vulgar names, and walked away for a few minutes. When he returned, his supervisor told him she did not have to put up with that behavior. The employer initially contemplated transferring the claimant to another department, but because of a concern that the claimant might have a further incident that might involve a customer, determined to simply end the employment. He has since had some adjustments in his medications to seek to better regulate his behavior.

The claimant had established an unemployment insurance benefit year effective February 27, 2011. He reopened his claim by filing an additional claim effective June 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his behavior toward his supervisor on June 29, 2011. While this type of behavior is not acceptable and the employer had a good business reason for deciding to end the employment, under the circumstances of this case, the claimant's conduct was an isolated incident for which the claimant lacked sufficient intent to be considered disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the

individual filed a valid claim.” Iowa Code § 96.19-3. The claimant’s base period began October 1, 2009 and ended September 30, 2010. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative’s July 21, 2011 decision (reference 03) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer’s account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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