

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OWEN C MONDS

Claimant

APPEAL NO. 09A-UI-04342-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 02/08/09

Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 4, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 24, 2009. Claimant Owen Monds participated was represented by his mother, Mary Monds. Robert Motter, Co-Manager, represented the employer. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether Mr. Monds was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Owen Monds was employed by Wal-Mart as a part-time maintenance associate from November 2007 until February 7, 2009, when Co-Manager Robert Motter discharged him. Mr. Monds' immediate supervisor was Assistant Manager George Robbins. Mr. Monds' duties involved maintaining the bottle redemption area/ recycling area at the front of the store. Toward the end of Mr. Monds' employment, the store got a new store manager and one or more additional new management members. The new team was put in place to correct operational deficiencies that existed under the previous store manager. The new store manager was keen on maintaining the appearance of the front of the store including the can redemption area.

The final incident that prompted the discharge occurred on February 7, 2009. Co-Manager Robert Motter had noted when he arrived at 8:00 p.m. that the can redemption area was in disarray. Mr. Motter told the front end supervisor to be certain that Mr. Monds completed all of his maintenance duties in the can redemption area before he left for the day. Mr. Monds was scheduled to leave at 10:00 p.m. At the end of Mr. Monds' shift, overnight Maintenance Supervisor Rodger Schwabe went to the can redemption area to make certain that Mr. Monds had completed all of his assigned duties. Mr. Schwabe told Mr. Monds that they needed to "walk" the area together. Mr. Monds asserted that he did not need to walk the area and that it was time for him to leave. When Mr. Monds continued his refusal to review his work area with Mr. Schwabe, Mr. Schwabe summoned Mr. Motter from a staff meeting. Mr. Motter was not happy about having to leave the meeting to talk to Mr. Monds.

Once Mr. Motter joined the discussion, he asked Mr. Monds what the problem was. Mr. Monds asserted that it was time for him to leave and that he did not need to “walk” his work area with anyone. Mr. Motter explained that he had sent Mr. Schwabe to review Mr. Monds’ work area with Mr. Monds before Mr. Monds left. Mr. Monds reiterated that he did not need to walk the area with anyone and that it was his scheduled time to be off. Mr. Motter lost patience with Mr. Monds. Mr. Motter asked Mr. Monds whether he wanted his job. Mr. Motter demanded Mr. Monds’ employee badge and sent him home. Mr. Motter told Mr. Monds that he could speak with the store manager in the morning if he had any questions. The next morning Mr. Monds’ mother telephoned the store and spoke with the store manager, who affirmed Mr. Monds’ discharge from the employment.

On January 28, 2009, Assistant Manager George Robbins has issued a reprimand to Mr. Monds for leaving work at the end of his shift without performing all necessary tasks.

Mr. Monds has been diagnosed with attention deficit disorder (A.D.D.). Mr. Monds attended school until 12th grade, but has not yet graduated. Mr. Monds had sufficient ability that he was not eligible for special education services or an individualized education plan. Mr. Monds has at time taken Adderall to address the A.D.D.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In Gilliam v. Atlantic Bottling Company, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

The weight of the evidence indicates that the employer reasonably requested on February 7, 2009 that Mr. Monds review his work area with a supervisor before he left for the day. The employer was justified and reasonable in wanting to make certain that the front of the store was properly maintained. The employer was justified and reasonable in holding Mr. Monds to the completion of his assigned duties before he left for the day. Mr. Monds unreasonably refused a supervisor's directive to "walk" the area with the supervisor. Even after the Co-Manager intervened, Mr. Monds refused to review the work area with a supervisor before he left for the day. Mr. Monds had demonstrated the ability to perform his assigned duties throughout the employment. As the parent of a child with multiple disabilities, the administrative law judge is sensitive to the special needs of persons with disabilities. But Mr. Monds' relatively mild disability did not play a role in or excuse his refusal to follow the employer's reasonable directive to cooperate in making certain that all his assigned duties were completed before he left for the day.

The evidence in the record indicates no other instances where Mr. Monds had refused to follow a reasonable directive of the employer. In the absence of other similar incidents, the administrative law judge cannot find the sort of continued refusal that existed in the Gilliam case. In addition, the evidence does not establish a pattern of intentionally negligent or careless work performance that would indicate a willful or wanton disregard of the employer's interests. Though the decision to discharge the claimant was within the discretion of the employer, the administrative law judge concludes that Mr. Monds was not discharged for misconduct in connection with the employment that would disqualify him for unemployment insurance benefits. Mr. Monds is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

DECISION:

The Agency representative's March 4, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs