

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARIE V CONARD**  
Claimant

**WALMART INC**  
Employer

**APPEAL 21A-UI-18678-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/27/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a - Misconduct Defined

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant being discharged from work on March 3, 2021 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on October 15, 2021. The claimant, Marie Conrad, participated. The employer, Walmart Inc., participated through Kathleen Travers, along with Christina Todd and Brooke Wade. Claimant objected to employer's exhibits being admitted. They were not admitted for the reasons stated on the record. Employer's request for a postponement was denied. Judicial notice was taken of the administrative record.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: claimant's first day of employment was November 17, 2017 and her last day worked was March 3, 2021. Claimant was discharged on March 3, 2021 for violating the company's policy regarding theft. Claimant was provided a copy of the policy and was aware of the policy, and the act of stealing is an illegal, criminal act. It was reported to management that Claimant was stealing from the employer. The employer investigated, by reviewing video and learned claimant twice stole from the company and that there was evidence. Claimant was using the self-checkout lane on December 12, 2020 when she did not ring up all the Barbie dolls, stealing \$7.94 in product, plus taxes. Claimant was using the self-checkout lane on December 22, 2020 when she only rang up two of the three boxes of crab, stealing \$19.94 in product, plus taxes. Employer confronted claimant regarding this and claimant told employer she thought everything rang up and she didn't have any intention of stealing. The self-checkout lane has a scanning screen that shows a running total of the product scanned and the price of the product. On two occasions, claimant stole from her employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

Not scanning all the items in the self-checkout lane to avoid paying for them is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer’s interest by her conduct and knowingly violated company policy, not once, but twice. The claimant engaged in disqualifying misconduct even without previous warning.

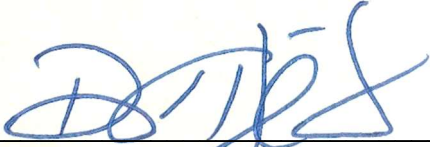
The employer has presented substantial and credible evidence of the two thefts. This behavior was contrary to the best interests of the employer and is disqualifying misconduct, even without a prior warning.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; 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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer version of events to be more credible than the employee’s recollection of those events. Claimant’s story changed and for someone who worked there for three and one-third years, failed to make sense. Her appeal failed to mention being terminated for theft, but focused on not being called for fact finding. Benefits are denied.

**DECISION:**

The August 23, 2021, (reference 01), unemployment insurance decision is **AFFIRMED**. The claimant was discharged from employment due to 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.



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Darrin T. Hamilton  
Administrative Law Judge

November 8, 2021  
Decision Dated and Mailed

dh/kmj