

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONIE W CURRAN**  
Claimant

**APPEAL NO. 20A-UI-00910-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 12/29/19**  
**Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 21, 2020, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 19, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on February 17, 2020. Claimant Tonie Curran, Jr., participated personally in the hearing and was represented by Tonie Curran, Sr. Mr. Curran, Sr., testified and presented additional testimony through Tonie Curran, Jr. and Anne Curran. Angie Agnew represented the employer and presented additional testimony through Jessica Briggs. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 5, 6, 7, 15, 17 and 19 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

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

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Tonie Curran, Jr., was employed by Walmart, Inc. on a full-time basis from 2013 until December 19, 2019, when the employer discharged him from the employment. Mr. Curran, Jr. worked at the Walmart store in Carroll. Anne Curran is Mr. Curran, Jr.'s mother. Mrs. Curran has worked at the Carroll Walmart since 2008. She was instrumental in Mr. Curran, Jr. being hired to work at the Carroll Walmart and in his continued employment at the Carroll Walmart. Mr. Curran, Jr. is a man in his twenties who has a cognitive learning disability and dyslexia. The University of Iowa Center for Disabilities and Development diagnosed Mr. Curran, Jr.'s disabilities when he was in elementary school. As an elementary, middle school, and high

school student, Mr. Curran, Jr. qualified for and received special education services that included the assistance of a one-on-one educational associate/paraprofessional. Subsequent to his graduation from high school, Mr. Curran, Jr. qualified for and received school district special education transitional support services that made it possible for him to attend a culinary program at a community college. Mr. Curran, Jr. continued to qualify and receive special education support services until he aged-out of the school district's special education program. Mr. Curran, Jr. and his mother disclosed Mr. Curran's disabilities to the employer at the time of hire. Early in the employment, Mrs. Curran offered to provide documentation of Mr. Curran's disabilities for the employer's records and consideration, but the employer's human resources manager stated such documentation was unnecessary. Throughout the employment, Mr. Curran, Jr. and his mother continued to ensure Mr. Curran's supervisors were aware of Mr. Curran, Jr.'s disability issues that impacted on his employment. The employer was at all relevant times aware of Mr. Curran's learning disability and that it impacted on his work performance and workplace interactions. For most of his employment, Mr. Curran, Jr. worked as an overnight stocker.

Effective October 7, 2019, Mr. Curran, Jr., began working at as a Cap 1 Associate. Throughout Mr. Curran, Jr.'s time as an overnight stocker, Mrs. Curran had also worked as an overnight stocker and her work hours had largely overlapped with Mr. Curran, Jr.'s work hours. Effective October 5, 2019, Mrs. Curran commenced working as a Cap 1 Associate, with work hours that again largely overlapped Mr. Curran, Jr.'s work hours. Once Mr. Curran, Jr. began working as a Cap 1 Associate, his work hours became 4:00 a.m. to 1:00 p.m. The Cap 1 Associate duties included stocking duties similar to the overnight stocking duties. However, the new position brought with it a new set of duties that included working in the frozen/dairy department, with time constraints of how long a cart of freight could be on the sales floor and out of refrigeration before the freight had to either be placed in the refrigerated retail display or returned to the cooler/freezer for food quality and food safety reasons. In addition, the Cap 1 Associate duties included the new duties of selecting/picking stock from backroom bins before moving those items to the sales floor. In addition, the Cap 1 Associate duties included a duty to move items that customers or other staff had placed in an incorrect position on the retail shelf from the incorrect position to the correct position on the retail shelf. In light of Mr. Curran's learning disabilities and dyslexia, the new duties presented a challenge for Mr. Curran, Jr. Mr. Curran, Jr. desired to perform the duties thoroughly and accurately. Mr. Curran, Jr. needed more time to complete the new duties than a non-disabled employee might need to perform the duties. The employer uses a computer software system to calculate the time necessary for employees to complete assigned tasks. The computer software system does not factor employee disabilities or time needed to correct stocking errors the employee discovers in the course of performing the assigned tasks. Effective October 12, 2019, Mrs. Curran began a medically-based leave of absence. Mrs. Curran continued off work through December 19, 2019, the day on which Mr. Curran, Jr. was discharged. Mrs. Curran notified the employer on the morning of December 19 that she would be returning to the employment the following week.

At about 12:45 p.m. on December 19, 2019, Mr. Curran, Jr.'s supervisor summoned Mr. Curran to a disciplinary meeting with Front End Coach/Assistant Manager Jessica Briggs and Assistant Manager Ricardo Morales. The Cap 1 Supervisor, Julie Daniels, also participated in the disciplinary meeting. Mrs. Curran had usually been invited by the employer to participate in discussions related to Mr. Curran, Jr.'s work performance, but was not aware of and did not participate in the December 19, 2019 meeting. During the meeting, the three managers first made Mr. Curran, Jr. guess why the meeting was taking place and then told Mr. Curran, Jr. that he was taking too long to perform assigned work. When Mr. Curran spoke of his learning disability issues and other challenges in performing the work within the computer software allotted time, the managers called Mr. Curran, Jr.'s explanations "excuses." When Mr. Curran,

Jr. asked for additional time to master the duties in lieu of the employer taking disciplinary action, the employer stated the issues were recurrent and necessitated a written reprimand. The managers instructed Mr. Curran to prepare, there and then, a "plan of action" stating how he was going to correct the work deficiencies. The managers offered help in preparing the action plan, but only if he excluded his concerns from the action plan and included only what the employer wanted included in the action plan. When Mr. Curran, Jr. balked, the employer labeled Mr. Curran's conduct disrespectful. The managers raised their voices and Mr. Curran, Jr. responded in kind. Mr. Curran's habit, based in his disability issues, is to look at people who are speaking to him. During the meeting, the employer positioned managers on either side of Mr. Curran, Jr. and Mr. Curran, Jr. would look from one manager to another as they spoke. The managers asserted Mr. Curran, Jr. was rolling his eyes, directed him to stop, and labeled the alleged eye-rolling disrespectful. Mr. Curran, Jr. expressed concern that he had a doctor appointment set for 2:00 p.m. and stated that he needed to leave so that he did not miss his appointment. Mr. Curran, Jr. did indeed have a 2:00 p.m. dental appointment in Lake City and needed to make half-hour trip to his home in Lake City in time to change and report for the appointment. Mr. Curran, Jr. asked for a day to prepare the action plan. The employer refused the request. Mr. Curran, Jr. was by this point very emotionally upset, so much so that Ms. Briggs directed him to take deep breaths. Ms. Briggs threatened to summon the police. Ms. Briggs then announced that the meeting would now instead include a discharge from the employment. The managers had Mr. Curran provide his employee logon credentials to acknowledge the discharge and requested return of his employee badge. The meeting adjourned about 1:25 p.m. Mr. Curran, Jr. then rushed to his appointment. About an hour later, Mrs. Curran contacted the employer in an effort to understand what had happened and Mr. Curran, Jr.'s upset state. The employer confirmed that Mr. Curran, Jr. had been discharged from the employment. Mrs. Curran reminded the employer of Mr. Curran, Jr.'s learning disability. The employer declined to further discuss the matter with Mrs. Curran.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

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).

The evidence in the record establishes a discharge for no disqualifying reason. The Carroll Walmart managers' conduct on December 19, 2019 was not merely unreasonable from start to finish, but egregious and reprehensible, especially the conduct of Ms. Briggs. Mr. Curran, Jr. performed his Cap 1 Associate duties in good faith and to the best of his ability. The Carroll Walmart managers knew this, were well aware of his disability issues and the challenges he faced in performing the new duties, willfully and wantonly disregarded his disability issues, and subjected him to increasingly heavy-handed and unreasonable treatment during the December 19 meeting. The timing of the disciplinary meeting and discharge were highly suspect. The employer was well aware of Mr. Curran, Jr.'s need for additional support in the employment, including the reasonable need for his mother's assistance in navigating and resolving work performance and interpersonal communication issues. The managers intentionally elected to hold the disciplinary meeting and to discharge Mr. Curran, Jr. from the

employment at a time when his mother would not be present and available to offer reasonable support to Mr. Curran, Jr. The managers, through their own unreasonable and egregious conduct during the meeting, provoked Mr. Curran, Jr.'s predictable upset response. Mr. Curran, Jr. is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

**DECISION:**

The January 21, 2020, reference 01, decision is affirmed. The claimant was discharged on December 16, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn