

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHIP R JONES
Claimant

APPEAL NO. 09A-UI-04559-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from an unemployment insurance decision dated March 5, 2009, reference 01, that allowed benefits to Chip R. Jones. After due notice was issued, a telephone hearing was held April 17, 2009 with Mr. Jones participating. Assistant Manager Osman Islamagic participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Chip R. Jones was employed by Wal-Mart Stores, Inc. from July 19, 2007 until he was discharged February 8, 2009. He last worked as a meat cutter and processor. The final incident leading to the discharge occurred on February 8, 2009. Carrying an 80-pound box of hamburger, Mr. Jones went through a swinging double door. Although there was a window in the door, he could not see a cart on the other side. The door hit the cart, pushing the cart into a co-worker. Mr. Jones did not do this deliberately. He was not angry at the time. He was carrying the box for a customer he was assisting. Mr. Jones had received prior discipline during his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The evidence in this record persuades the administrative law judge that Mr. Jones was not acting willfully or negligently and that the final incident leading to his discharge was not an act of misconduct. The administrative law judge notes that the employer witness acknowledged that he did not witness the final incident and did not contradict Mr. Jones' version of what happened. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 5, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs