IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

DAWN M HOPPE
Claimant

APPEAL NO: 12A-UI-06148-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/03/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 16, 2012 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Diego Cuevas, the pharmacy manager, and Valerie Kleinow appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in early August 2011. After she worked part time for 30 days as a pharmacy associate, the employer gave the claimant full-time hours. The claimant received information that the employer required employees to clock out when they started a meal break and must clock in when they return to work from a break.

During her employment, the employer gave the claimant two written warnings for HIPAA violations. The first warning was on November 10, 2011, and the second was January 10, 2012. At the January 2012 written warning, the employer warned her that if she had any more violations, she could be discharged. The claimant understood that if she had any more HIPAA violations she would be discharged.

The claimant did not remember the employer talking to her in late March or early April about making sure she punched out for her meal break before she bought any food to eat. The claimant understood the employer's policy.

When the claimant went on a meal break on April 16, she was upset with the way her co-workers treated her. The claimant forgot to punch out right away and instead got money and bought some food. About five to ten minutes later or after she bought food, she remembered

she had not punched out and did. A co-worker reported to Cuevas that the claimant bought food before she punched out for her break.

Since the claimant already received a Decision Day, the last step in the employer's progressive discipline policy, the employer discharged her on April 16 for violating the employer's policy about punching out for a meal break before buying food for the break.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

> 1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
> 2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
> 3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. Even though the claimant had received written warnings for HIPAA violations, she had not received written warnings for failing to punch out before she bought food to eat at her break. The claimant understood this policy, but did not remember the employer talking to her a couple of weeks earlier about making sure she punched out before she bought food to eat on a break. The facts do not indicate the claimant intentionally failed to follow this policy. The evidence does not establish that she repeatedly failed to follow this policy. In other words, the facts indicate the claimant forgot to punch out on April 16 when she went to break. On that day she was upset with the way co-workers treated her. The claimant used poor judgment when she failed to report that she initially forgot to punch out and then took the allotted time for her meal break. The employer discharged the claimant because she had already received a Decision Day for two previous HIPAA violations. The claimant had not previously received a written warning for failing to punch out for her meal breaks correctly.

Even though the claimant violated the employer's break policy, she did not intentionally disregard the employer's rule. She did not commit work-connected misconduct. As of April 29, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's May 16, 2012 determination (reference 04) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of April 29, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge when it is one of her base period employers.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css