

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAZEL P PADEN

Claimant

APPEAL NO. 16A-UI-12230-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 10/02/16

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's November 2, 2016, decision (reference 01) that concluded Hazel Paden (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 1, 2016. The claimant participated personally. The employer participated by Terence Johnson, co-manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 14, 2012, and at the end of her employment she was working as a full-time door greeter. She worked overnight hours. The claimant signed for receipt of the employer's handbook on September 14, 2016. There was nothing in the policy about the claimant wearing a vest until a new policy was issued on July 18, 2016. The claimant did not sign for receipt of the new policy. The claimant was issued a vest in July 2016. It was the only one the employer had left that had not been worn by another employee. The vest was size small and fit over her street clothes in July 2016.

The employer held regular meetings to disseminate information but the employer did not allow the claimant to attend them. She was sent to the vestibule to greet customers during the meeting. The claimant did not receive any information about vests that would have been given at the meetings. As the weather grew colder the claimant needed to wear her coat at work to keep warm. She was diagnosed with anemia and she became cold easily. The supervisor saw her once with her coat on and asked her about her vest. She showed the supervisor that it was under her coat. The supervisor told her the vest had to be visible. The claimant explained that the vest would not fit over her coat. The supervisor told the claimant he would get her a larger vest. The claimant worked without her coat in the cold. The supervisor never provided a larger

vest. The claimant could not leave her work station to get one for herself. After work she needed to leave immediately to catch a bus. On September 30, 2016, the claimant was working in the vestibule wearing her coat. She had her vest on a cart next to her. The employer terminated her for not wearing her vest.

The claimant filed for unemployment insurance benefits with an effective date of October 2, 2016. The fact finder called Ryan Flanery on November 1, 2016, for the fact finding interview but he was not available. The employer provided documents in lieu of personal participation in the fact finding interview. The employer did not identify the dates and particular circumstances that caused the separation. The employer did not submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 2, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rgv