

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREY A KING

Claimant

APPEAL NO. 09A-UI-17220-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 10/11/09

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 29, 2009 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 22, 2009. Claimant participated. Employer participated through Asset Protection Coordinator Jennifer Roberts.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a cashier and was separated from employment on October 12, 2009. While investigating an October 7 transaction for multiple voids employer found and investigated an October 8 transaction involving claimant as the customer and cashier T. Murphy where six items were scanned, voided and put into a bag. Murphy was also discharged. Claimant and Murphy had no relationship outside of work. Claimant had several food items for which she paid with food stamps. She also had non-food items including detergent, air freshener and a bottle of Pine Sol. She instructed Murphy to put other non-food items back as she had decided not to purchase them. She did not see what Murphy did with them and gave her a \$50.00 bill to pay for the remaining items. She received change back.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was nothing more than inattentiveness to the transaction that Murphy conducted and employer has failed to attribute any malintent to claimant. Benefits are allowed.

DECISION:

The October 29, 2009 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css