

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA N ELLIOTT
Claimant

APPEAL NO. 12A-UI-11928-VS

WAL-MART STORES INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/09/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated September 28, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 12, 2012, in Davenport, Iowa. The claimant participated personally. The employer advised the agency in writing that it would not be participating. The record consists of the testimony of Andrea Elliott and Claimant's Exhibits 1-7.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was the full-time customer service manager at one of the employer's stores in Davenport, Iowa. She started working for the employer on February 13, 2009. Her last day of work was September 13, 2012. She was terminated on September 13, 2012.

The incident that led to the claimant's termination occurred on August 5, 2012. The employer puts newspapers in the employees' break room, which include coupons for use at Wal-Mart. Employees regularly clip and use these coupons. The claimant used a coupon on August 5, 2012. The employer terminated her for using the coupon. There is no provision in the employee handbook that prohibits using coupons from newspapers in the break room.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence whatsoever of misconduct in this record. The employer had no rule against using coupons from newspapers in the break room. Employees used these coupons all the time. An employee cannot be disqualified for misconduct on breaking a rule that does not exist or that the employee does not know about. In addition, the employer waited for more than a month to terminate the claimant. Even assuming using the coupon was misconduct, the claimant clearly was not terminated for a current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated September 28, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/tll