

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLA R DEAHL
Claimant

APPEAL NO. 09A-UI-10761-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/14/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated July 13, 2009, reference 01, which held that no disqualification would be imposed regarding Willa Deahl's separation from employment. After due notice was issued, a hearing was held by telephone on August 12, 2009. Ms. Deahl participated personally. The employer participated by Michael Rodriguez, Co-Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Deahl was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Deahl was employed by Wal-Mart from November 22, 1989 until June 16, 2009. She was last employed full time as a door greeter. She was scheduled to work from 10:00 a.m. until 6:00 p.m. on June 16. At approximately 11:30 a.m., she asked if she could take her lunch break at the time she usually took her morning break because she was not feeling well. She indicated she had not yet been relieved for break but was not allowed to leave at that time.

At approximately 2:00 p.m., Ms. Deahl spoke to management and indicated that she really needed to eat because her face was feeling numb. She was told the employer was working on getting someone to relieve her. Ms. Deahl has diabetes and it is critical that she eat at regular intervals. She subsequently passed out at the front doors of Wal-Mart on June 16 because she had not eaten. She was discharged approximately two hours later. The employer felt she had been insubordinate in the manner in which she approached management in a public place to talk about not getting her break.

Ms. Deahl had received a warning on April 26, 2008 after she demanded that someone relieve her for her break. The warning noted that she felt she would go into diabetic shock if she did

not have a break soon. She was disciplined because the employer felt she was being loud and rude to management at a location where she could be observed by the general public. The only other warnings Ms. Deahl had received concerned her attendance. The employer did not have her attendance records available during the hearing.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. 871 IAC 24.32(8). In the case at hand, the discharge was triggered by the fact that Ms. Deahl approached management on June 16 about the fact that she had not received a break.

Ms. Deahl may well have been loud when she approached management on June 16. However, because of the critical nature of her needs at the time, her conduct was not unreasonable. Given the warning of April 26, 2008, the employer knew she was diabetic and, therefore, had to eat at regular intervals in order to avoid going into diabetic shock. The fact that her needs were critical on June 16 is demonstrated by the fact that she passed out from not eating. She did not intend to be insubordinate or disrespectful when she approached management about her break. She was only attempting to avoid having a medical emergency from not eating at the appropriate time. Her actions did not evince a willful or wanton disregard of the employer's standards.

After considering the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated July 13, 2009, reference 01, is hereby affirmed. Ms. Deahl was discharged but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs