

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL MURPHY
Claimant

WALMART INC
Employer

APPEAL 20A-UI-07582-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: APPELLANT (2)

Iowa Code Chapter 95 – Requalification
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On June 27, 2020, the claimant filed an appeal from the June 18, 2020, (reference 01) unemployment insurance decision that denied benefits based on job related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 10, 2020. Claimant participated. Employer participated through Adrian Appleman, Manager and Pixie Allan, Representative. Exhibit A was admitted into the record.

ISSUE:

Did claimant commit job related misconduct?
Has the claimant requalified for unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on 12/28/2011. Claimant last worked as a part-time door greeter. Claimant was separated from employment on October 22, 2019, when he was discharged for violation of company policy for an incident on October 19, 2019. Part of claimant's job responsibility was to check receipts when customers were leaving the Sam's Club Store. Store policy was that no employee could impede a customer from leaving the store or touch a customer to stop them from leaving the store. Claimant was aware of the policy. Claimant had received a written warning about violating this policy approximately one week before the October 19, 2019 incident.

On October 19, 2019 a group of five customers were leaving the store and claimant was scanning the receipts. Another employee had checked these customers out and came over to tell claimant that they had paid for the items and that they could leave. The other employee reported that claimant had called the customers crook and would not let them leave. Claimant reached out to hold onto one of the customer's elbows and stood in front of a cart so the customer could not leave. Mr. Appleman reviewed the video of the incident and talked to two other employees. This investigation supported the fact that claimant had violated store policy by touching customers and

impeding their exit from the store. Mr. Appeleman had provided claimant a written warning about a week earlier about not impeding customers from leaving the store.

Mr. Appleman discharged claimant on October 22, 2019 for violation of company policy after being warned. Claimant agreed that he had been warned shortly before the October 19, 2019 incident not to impede customers from leaving the store. Claimant was aware of store policy that prohibited impeding and touching customers when they exit the store. Claimant admitted he violated company policy after being warned.

Claimant's primary appearance is whether he was worked ten times his weekly benefit amount since his discharge on October 22, 2019 and has requalified for unemployment benefits. Claimant has worked for H & R Block for a number of years. He starts working in November and is terminated in April. Claimant started working for H & R block in November 2019. He received his first pay check for the week ending November 15, 2019. Claimant continued to earn wages from H & R Block through April 17, 2020. Claimant has earned \$2,751.82 in wages since his discharge for Walmart. Claimant's weekly benefit amount for this claim is 257.00 per week. Claimant has earned more than ten times his weekly benefit amount in insured work since his discharge. Claimant has requalified so long he is otherwise eligible.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 claimant was aware of the employers' policy concerning impeding customers and touching customers. Claimant received a written warning within a week of the incident of October 19, 2019. Claimant's conduct in disregarding the employer's policy was deliberate and was not an isolated incident. I find the employer has proven claimant committed job related misconduct on October 19, 2019.

I find that claimant has earned ten times his weekly benefit amount since his discharge on October 22, 2019. Claimant has requalified for unemployment benefits and may receive unemployment benefits, if he is otherwise eligible.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 18, 2020, (reference 01) unemployment insurance decision is reversed. Claimant has earned ten times his weekly benefit amount, claimant may receive unemployment benefits, provided he is otherwise eligible.



James F. Elliott
Administrative Law Judge

August 17, 2020
Decision Dated and Mailed

je/scn