

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP S ROSE
Claimant

APPEAL NO. 09A-UI-03047-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 01/18/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed February 13, 2009 decision (reference 01) that concluded Phillip S. Rose (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2009. The claimant did not participate in the hearing. Jeremy Shively, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 7, 2008. He worked as a full-time employee in the tire and battery department. Shively supervised the claimant. The employer's progressive disciplinary policy informs employees they will receive a written warning for any problem after they have received a verbal coaching. If there is another problem after the written warning, the employer gives the employee a Decision Day. After a Decision Day, the employer discharges an employee when there are further issues or problems.

The claimant received a verbal coaching on September 6, 2008, because he parked in an area he was not authorized to park. On October 10, 2008, the claimant received a written warning for going to his car while on the clock before a scheduled lunch break and then punching out for a 30-minute lunch break. The employer gave the claimant a Decision Day on December 31, for excessive absenteeism. The last time the claimant had been late or absent from work was December 8, 2008.

On January 21, the claimant bought a slice of pizza for lunch before he punched out for his lunch break. The employer's rules require employees to purchase food when they are not on duty. When the employer talked to the claimant about buying pizza before he checked out for lunch, the claimant indicated he had forgotten to punch out before he bought the pizza.

On January 21, 2009, the employer discharged the claimant for again violating one of the employer's policies and because he had already received a Decision Day for violating various rules.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant by following its progressive disciplinary policy. Although the employer does not allow employees to purchase food while on-the-clock, the evidence indicates the claimant forgot to punch out for lunch before he bought a slice of pizza. As soon as the claimant realized he had not punched out for lunch, he punched out. The facts do not establish that the claimant intentionally or substantially disregarded the employer's interests on January 21, 2009. Therefore, the employer did not establish that the claimant committed a current act of work-connected misconduct. As of January 18, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's February 13, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of January 18, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw