

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GEORGETTE E GIEST
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SPIRIT LAKE IA 51360

WAL-MART STORES INC
C/O THE FRICK COMPANY
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-07827-L
OC: 06-20-04 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 14, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 12, 2004 in Spencer, Iowa. The claimant did participate and Darlene Siefkin observed. The employer did participate through Brett McRea.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time fitting room attendant through June 23, 2004 when she was discharged. On June 20, claimant was training Jamie, an intern in the fitting room area. Jamie apparently later complained about how claimant treated her but claimant was the senior

fitting room employee and was obligated to show Jamie proper procedure such as when to hang and when to fold shirts. She also called a customer ma'am and asked her to hand the item number over the fitting room door so she could hang it on the outside to make sure no one entered the fitting room while the customer was in there. Jamie is still an intern but her testimony was not offered at hearing. Art Cummings, assistant manager, confronted claimant about the allegation but Brett McRea does not know her response and Cummings did not participate in the hearing.

Claimant told Jamie, whom she had only seen twice, there was supposed to be a tag on the purse before it went back on the floor. Teresa then took the purse and threw it over her shoulder. While two prior verbal warnings were issued to claimant, no customer or coworker statements about details of the alleged complaints were ever shown to her. Two days prior to the separation, claimant did jokingly "flip" Teresa's ponytail once with her finger but did not hit her.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

Employer has not established any credible inappropriate conduct by claimant towards Jamie, Teresa or customers. An employee is entitled to some reasonable, credible degree of detailed information about customer or coworker complaints so that they may have a reasonable opportunity to respond before a decision is made to discipline. No credible information about coworker or customer complaints was provided to claimant before her separation, nor was it offered at hearing. Employer had failed to meet its burden of proof to establish a final act of misconduct. Benefits are allowed.

DECISION:

The July 14, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/pjs