

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW M RANKIN**  
Claimant

**APPEAL NO. 10A-UI-08374-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 05/09/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's June 3, 2010 decision (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on July 28, 2010. The claimant did not participate in the hearing. Angela Bluma, a co-manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 in June 2009. The claimant worked as a full-time floor merchandiser. The claimant received information during orientation that employees were only to use at work safety box cutters the employer had available for all employees to use.

Prior to May 8, the employer gave claimant a Decision Day for attendance issues. The next step in the employer's disciplinary process is discharge. Also, prior to May 8, the claimant had not received any warning for using unapproved equipment at work. On May 8, the claimant helped another employee open something. Instead of picking up one of the employer's safety box cutters, the claimant used his personal knife or box cutter. The claimant was injured at work while using his knife or box cutter.

The employer discharged the claimant for using his personal knife or box cutter, because the next disciplinary step was a discharge after he had already received a Decision Day for attendance issues. The employer discharged the claimant on May 11, 2010. If the claimant would not have received a Decision Day, the employer would have counseled him or given him a warning but would not have discharged him.

## 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).

Based on the employer's progressive disciplinary policy, the employer was justified in discharging the claimant. Since the claimant had not been warned about using his own knife or box cutter before, the isolated May 8 incident does not establish that the claimant intentionally violated the employer's policy. As of May 9, 2010, the claimant is qualified to receive benefits.

## DECISION:

The representative's June 3, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons but did not establish that the claimant committed a current act of work-connected misconduct. As of May 9, 2010, 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw