

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OSCAR CLINTON

Claimant

APPEAL NO: 14A-UI-11179-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 10/05/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 24, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 17, 2014. The claimant participated in the hearing with his wife/witness Michelle Clinton. Austin McCrea, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time customer service manager for Wal-Mart from July 1, 2012 to October 9, 2014. He was discharged after pleading guilty to a misdemeanor that was unconnected to his employment.

The claimant was placed on a Last Chance Agreement July 21, 2014, after reporting for work under the influence of alcohol and failing a blood alcohol test June 24, 2014. He was suspended until July 21, 2014. During the suspension, the claimant, who had been off his bi-polar medication for several years, was suffering the effects of his illness when approached by the police June 26, 2014, at which time he ran toward the nearest hospital. The police caught him before he reached the hospital but after spending a few hours in jail the claimant was admitted into the psychiatric unit of St. Luke's Hospital. He was charged with disorderly conduct and criminal mischief. The claimant's wife notified the employer of the claimant's arrest the day it occurred. He pled guilty to the disorderly conduct charge August 6, 2014, because his fine was \$200 less if he pled guilty rather than being found guilty. He was arraigned on the criminal mischief charge October 6, 2014. He did not know that a guilty plea to disorderly conduct outside of work would result in his termination from employment.

The employer learned of the guilty plea from the local newspaper around August 27, 2014, approximately three weeks after it took place. The local store manager reported the situation to

the corporate human resources department at that time and the claimant's employment was terminated October 9, 2014, for violating the employer's policy stating any fighting or violent behavior criminal charges will result in termination of employment.

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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

The claimant pled guilty to a non-work-related criminal charge August 6, 2014, and the employer became aware of the situation approximately three weeks later. It reported the claimant's guilty plea to disorderly conduct to the corporate human resources office at that time and was instructed to terminate the claimant's employment October 9, 2014, six weeks after the employer learned of the plea. Consequently, not only was the claimant's criminal charge for a non-work-related event, neither was it a current act of misconduct because the employer waited six weeks to discharge the claimant. Under these circumstances, the administrative law judge concludes the termination was based on a criminal charge for a non-work-related issue and even if it was determined it was work-related misconduct it was not for a current act of misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 24, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css