

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERELL M STEWART
Claimant

APPEAL NO. 11A-UI-09151-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/05/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated July 1, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 3, 2011. The claimant participated. The employer participated by Ms. Christine Williams, assistant manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Terell Stewart was employed by Wal-Mart Stores, Inc. from January 20, 2007, until June 9, 2011, when he was discharged from employment. Mr. Stewart last held the position of part-time customer service manager and was paid by the hour. His immediate supervisor was Pat Lamar.

Mr. Stewart was discharged on June 9, 2011, based upon the employer's belief that Mr. Stewart had exceeded his 15-minute break time on June 2, and June 3, 2011.

On June 2, 2011, Mr. Stewart was reminded by another assistant manager that break times were limited to 15 minutes and that time spent in checkout lines would count against the claimant's 15-minute break period. The following day, June 3, 2011, Mr. Stewart appeared to have exceeded his break period because he was sent on a "price check" at a time that coincided with the beginning of his break. Because of the delay in verifying the price check, Mr. Stewart returned to his work station, exceeding the 15-minute time limit. Although Mr. Stewart explained the reason for what appeared to be excessive break time on June 3, 2011, he was nonetheless discharged from employment. The claimant had received other coachings from the company and was subject to discharge under company policy.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992). 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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The evidence in the record shows that the claimant was discharged based upon the employer's belief that he had intentionally exceeded 15-minute break periods on June 2, and June 3, 2011. On June 2, the claimant was reminded by another assistant manager to limit his break periods to 15 minutes. The following day, however, the claimant appeared to have exceeded his

15-minute break period because he was performing duties for Wal-Mart checking the price of an item for another employee while the claimant was on his way to his 15-minute break.

The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable.

The question in this case is not whether this employer has a right to discharge this employee for the reason stated, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Stewart may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 1, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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