

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA BRADLEY
Claimant

APPEAL NO: 07A-UI-06958-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/10/07 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rebecca Bradley (claimant) appealed an unemployment insurance decision dated July 16, 2007, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Wal-Mart Stores, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2007. The claimant participated in the hearing. The employer participated through Kim Van Roekel, Assistant Manager. Employer's Exhibits One through Four were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from April 25, 2006 through June 8, 2007 when she was discharged per the employer's progressive disciplinary policy. Employees are given a verbal warning, a written warning, and a one-day suspension before they are discharged upon the fourth and final incident. Her verbal warning was issued on January 12, 2007 for removing products from the floor for five days without purchasing them. A written warning was issued on March 21, 2007 as the result of the claimant attempting to take a break even after being advised it was not time for her break and that she had to wait for a replacement. She was then late in returning from her break and had to be called to the front of the store. The claimant received the one-day suspension or decision-making day on April 25, 2007 for seven unexcused absences. She was advised the next level of action would be termination. The final incident occurred on June 3, 2007 when the claimant was holding an infant while checking out a customer. The infant was not the customer's and the customer complained to management because the claimant was not focusing on the transaction. The claimant conducted at least two transactions while holding the infant. She admitted holding the

infant while working and it was confirmed by the employer's surveillance camera. She was discharged on June 8, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 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 claimant was discharged per the employer's progressive disciplinary policy. She knew that the next step would be termination but claims that she did not know that she was doing anything wrong by holding a baby. However, the claimant admitted the employer was probably not upset that she was holding a baby but that she was holding a baby while completing a business transaction. Cashiers are required to communicate with each customer and that could not be properly done if the claimant was distracted. The claimant's violation of known work rules was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior

the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 16, 2007, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs