

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BARBARA A ALDRIDGE**  
Claimant

**WALMART INC**  
Employer

**APPEAL 18A-UI-10002-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/26/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Discharge for Misconduct  
Iowa Admin Code r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Barbara Aldridge, Claimant, filed an appeal from the October 1, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Walmart, Inc. due to conduct not in the best interest of her employer. The parties were properly notified of the hearing. A telephone hearing was held on October 17, 2018 at 9:00 a.m. Claimant participated. Employer participated through Rosa Solorio, Assistant Manager. No exhibits were admitted.

**ISSUE:**

Whether Claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a fitting room associate with Walmart, Inc. from November 13, 2001 until her employment ended on August 25, 2018. (Solorio Testimony) Claimant's direct supervisor was Adeana Noah, Assistant Manager. (Solorio Testimony)

On August 24, 2018, claimant was working as a fitting room associate, when she had an altercation with a customer. (Claimant Testimony) The customer was rude to claimant and prevented claimant from following employer's policy regarding the number of items allowed in a fitting room. (Claimant Testimony) Claimant called for a supervisor. (Claimant Testimony) When the assistant manager arrived at the fitting rooms, she observed claimant in an agitated state. (Solorio Testimony) Claimant was yelling and removed her work badge and pushed it into the customer's body, resulting in a red mark and scratch. (Solorio Testimony) Claimant walked to the back of the store, clocked out and left the premises. (Claimant Testimony) On August 25, 2018, claimant went to the store to speak with her assistant manager and the store manager. (Claimant Testimony) The store manager terminated claimant's employment for gross misconduct against a customer. (Solorio Testimony)

Employer has a policy prohibiting any type of violence including conduct that injures, intimidates or causes fear in a customer. (Solorio Testimony) The policy states that if an employee is found to have violated the policy, then the employee may be disciplined up to and including termination of employment. (Solorio Testimony) Claimant was aware of the employer's policy. (Claimant Testimony) Claimant had no previous warnings for physical contact with a customer; however, claimant had received verbal warnings regarding her attitude and rudeness to customers. (Solorio Testimony)

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

When claimant pressed her badge into a customer's body, she violated a known company policy. The employer has the right to expect its employees not to assault customers; claimant disregarded her employer's interest. Claimant's action is disqualifying misconduct. Benefits are denied.

**DECISION:**

The October 1, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

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Adrienne C. Williamson  
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Decision Dated and Mailed

acw/rvs