

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WAL-MART STORES INC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03205-ET
OC: 02-12-06 R: 02
Claimant: Respondent (1R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 9, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 5, 2006. The claimant participated in the hearing. Beth White, Assistant Manager; Kerry Herlan, Former Store Manager; and Nancy Kinsey, Personnel Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time snack bar department manager for Wal-Mart from February 10, 2003 to February 1, 2006. On January 6, 2006, the claimant submitted notice to the employer stating her last day as department manager would be January 31, 2006 (Employer's Exhibit One). The employer read the note to mean the claimant was voluntarily quitting her job with Wal-Mart but the claimant actually just wanted to work part-time as a cashier until the Lawn and Garden department opened because she was starting her own restaurant and would not be available to work before 2:00 p.m. The claimant talked to Kerry Herlan, who was the manager at the time, about her plans but he was leaving that store soon and the issue was not resolved. Near the end of January 2006, the claimant requested vacation time in February 2006 and also completed a new availability form reflecting her new hours. She did not realize the employer considered her to have quit her job until she was not scheduled for two weeks and her check was not directly deposited into her account.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily left her job or was discharged. While the claimant submitted a resignation notice, the note states she was resigning only from her position as department manager and not from Wal-Mart in general. The claimant clearly did not wish to leave Wal-Mart altogether as evidenced by her conversations with Mr. Herlan and did not know the employer considered her to have voluntarily left her employment as evidenced by her request for vacation for February 2006. 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job-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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Because the claimant did not quit but was actually discharged, the administrative law judge concludes the employer has not demonstrated disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

The claimant is working full-time as a self-employed restaurant owner. There has been no initial determination of whether she is able and available for work. Consequently, that issue is remanded to the Claims Section for an initial determination.

DECISION:

The March 9, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded to the Claims Section for an initial determination.

je/kkf