

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARRY L COON

Claimant

APPEAL NO. 12A-UI-03676-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 07/03/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 26, 2012, reference 03, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 25, 2012. The claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUES:

The issues are whether the claimant filed a timely appeal and 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: Garry Coon filed a timely appeal by depositing his appeal with the U.S. Postal Service on or before April 5, 2012. The delay in the appeal being postmarked and/or received by the Workforce Development Appeals Section appears to be due to an error or omission on the part of the U.S. Postal Service. Good cause for late filing has been shown.

Mr. Coon was employed by Wal-Mart Stores from October 2011 until February 14, 2012, when he was discharged from employment. Mr. Coon worked as a part-time gas station attendant and was paid by the hour. His immediate supervisor was Jason Rainbow.

The claimant was discharged on February 14, 2012, after making a number of requests for a relief worker so that Mr. Coon could take his lunch break. The claimant is diabetic and needed to eat at certain time intervals. The claimant's request for a replacement caused the store manager to visit the work area. The claimant believed that he was being instructed to begin a leave of absence by the store manager based upon statements that were made to him by the manager following an inquiry into a light-duty limitation that had been imposed by Mr. Coon's physician. When Mr. Coon went to the company's human resource department to begin filling out leave of absence papers, the claimant was instructed to leave the premises by the store manager. Mr. Coon reasonably concluded that he had been discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does 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. Conduct that may be 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). Allegations of misconduct 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. See 871 IAC 24.32(4). In this matter, the claimant participated personally and testified under oath, testifying that he was discharged by the store manager following a dispute about whether a replacement would be provided so that the claimant could take a necessary lunch break. Mr. Coon testified that he had been instructed to begin a leave of absence by the store manager because the claimant was working with a light-duty limitation. The claimant further testified that when he attempted to fill out leave of

absence papers, he was told to leave the premises and concluded that he had been discharged from employment.

While the decision to terminate Mr. Coon 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 March 26, 2012, reference 03, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw