

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA C SIMONS
Claimant

APPEAL NO. 12A-UI-07535-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/20/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Linda Simons filed a timely appeal from a representative's decision dated June 20, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on July 31, 2012. Claimant participated personally. Participating as witnesses were Jami Cooper and Trish Parvu. The employer participated by Mr. Kelly Countryman, Assistant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Linda Simons was employed by Wal-Mart Stores from March 14, 2005 until May 22, 2012 when she was discharged from employment. Ms. Simons worked as a full-time deli associate and was paid by the hour. Her immediate supervisor was the assistant manager, Mr. Countryman.

The claimant was discharged due to what the employer considered to be abuse of the deli cleaning procedure log. Based upon a video tape that was not viewed by the assistant manager, the employer concluded that the claimant cleaned the slicer during a period of time that she was to be on break. Policy was to write in the time and to put initials on the log when the slicer was cleaned. Ms. Simons wrote the times that she cleaned the slicer on the logs as close to the time as possible. It is the claimant's position that she did not violate the company's policies by cleaning the slicer in inappropriate times or while on break.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying 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 insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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 Ct. 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).

Allegations of misconduct without additional evidence shall not be sufficient to result in a 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 case the employer relies primarily on hearsay evidence in support of its position that the claimant was not following required logging procedures with respect to the cleaning of a deli slicer. Mr. Countryman did not view the security tapes that allegedly show the policy violations. The claimant appeared personally and testified under oath that she followed the log procedures to the best of her abilities and did not intentionally violate any rules or procedures of Wal-Mart Stores. The claimant testified that the slicer was cleaned within the four-hour limit imposed by the employer and that she attempted to the best of her ability to correctly record the times.

The question before the administrative law judge is not whether the employer can discharge an employee for these reasons but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate Ms. Simons may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish disqualifying misconduct sufficient to warrant the denial of benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 20, 2012, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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