

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNA J HERNANDEZ**  
Claimant

**APPEAL NO: 12A-UI-02181-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/08/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 28, 2012, reference 03, that held she was discharged for misconduct on January 8, 2012, and which denied benefits. A telephone hearing was held on March 20, 2012. The claimant did not participate. Willie Huff, assistant manager, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment on June 28, 2011, and last worked for the employer as a full-time deli associate on January 8, 2012. The claimant received progressive discipline for attendance and punctuality issues that culminated in a final warning on November 23, 2011 that is referred to as a decision making day. She was advised that a further incident could mean employment termination.

On January 8, 2012, claimant clocked in for work but did not report at the deli for 20 minutes. Video security showed she went to a breakroom, used the restroom, and talked with employees. The employer discharged claimant for “stealing time” from the employer with an unauthorized break on January 8 in light of the progressive discipline that included a final warning.

Claimant failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 8, 2012, for repeated violations of company policy after progressive discipline.

The claimant knew the employer policy due to prior warnings and her repeated violations for the same offense constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated February 28, 2012, reference 03, is affirmed. The claimant was discharged for misconduct on January 8, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw