

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY J BYERS

Claimant

APPEAL NO: 12A-UI-02482-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01/22/12

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 29, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Dan Cosner, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2009. She worked as a full-time assistant manager. As an assistant manager, the claimant had the authority to make time adjustments or edits for hourly associates. When the claimant made time adjustments before January 2, 2012, she took the employee's word about time they should have checked in and or out on the timecard.

On January 2, 2012, the claimant and a support manager, C.R., walked the store as part of the claimant's job. C.R. was drinking a pop as they walked the store. Employees are not allowed to drink pop when they are working. Around 3:00 a.m., C.R. told the claimant he had forgotten to punch out for lunch. When the claimant asked what time he took lunch, she understood he took lunch when he walked the store with the claimant. The claimant thought he took an hour lunch break and made a time adjustment on C.R.'s timecard to indicate he took lunch from 2:00 to 3:00 a.m.

On January 9, a shift manager noticed an unusual number of time adjustments on an employee(s) timecard. The employer investigated. After reviewing some video, the employer saw C.R. walking in the store with the claimant between 2:00 and 3 a.m. The employer did not see C.R. between 1:00 and 1:40 a.m. The employer concluded C.R. took his lunch before 2:00 a.m. Based on the time the claimant entered on C.R.'s timecard, the employer concluded

C.R. was actually working even though his timecard indicated he was on lunch between 2:00 and 3:00 a.m. The employer believed the claimant's failure to accurately report the time C.R. was on a lunch break violated the wage and hour laws. The employer reported the situation to the corporate office.

On January 19, when the employer talked to the claimant, she acknowledged that she understood the importance of making accurate time adjustments. The claimant apologized for not being more precise with the time she had entered on C.R.'s time adjustment. Even though the claimant's job was not in jeopardy before this incident and this was the first time she had a problem of this nature, the employer discharged her on January 25, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The claimant did not intentionally disregard the employer's interests. She may have used poor judgment when she did not ask C.R. what specific time he was on lunch break. The claimant's failure to precisely enter the time C.R. was on lunch, when she had not been warned before that she needed to be very precise with time edits, does not rise to the level of work-connected misconduct. Based on the claimant's testimony – C.R. was on lunch break, not working, when he walked the store with her between 2:00 and 3:00 a.m. Therefore, as of January 22, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 29 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 22, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css