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

Appeal Number: 04A-UI-04699-CT
OC: 03/28/04   R: 04
Claimant: Respondent (1)

SHARAE LICKLIDER
1826 SUTTON PL #D
BETTENDORF IA 52722

WAL-MART STORES INC
℅ TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

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 for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 13, 2004, reference 01, which held that no disqualification would be imposed regarding Sharae Licklider's separation from employment. After due notice was issued, a hearing was held by telephone on May 21, 2004. Ms. Licklider participated personally. The employer participated by Mike Uitermarkt, Co-Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Licklider was employed by Wal-Mart from August of 1999 until March 25, 2004. She was last employed full time in the deli where she worked the last four weeks of her employment. She was discharged for using unapproved chemicals in the deli. She was using CLR, Dawn dish soap, and Goo-Gone to clean. She had not been told that she could not use these items in the deli and her manager was aware that she was using them. Ms. Licklider was using the items for approximately one week before she took a computer-based learning module which advised that she could not bring the cleaning items into the deli. She discontinued using them at that point.

Ms. Licklider was also discharged because of her attendance and because of an e-mail she sent to a coworker. All of her absences had been due to either illness or child care issues. All of the absences were properly reported. The last absence was on January 23, 2004. She was late on June 13 and October 15, 2003. The e-mail in question was sent to an African-American who worked with Ms. Licklider. Ms. Licklider indicated that her skin was brown because she drank chocolate milk. The coworker was not offended but someone else who read the e-mail reported it to management. As a result of the e-mail and her attendance, Ms. Licklider was given a "decision-making" day on January 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Licklider was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Past acts may be considered in determining the magnitude of a current act of misconduct. However, no disqualification from benefits may be imposed unless the final conduct which triggered the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8).

In the case at hand, the final conduct which caused Ms. Licklider's discharge was the fact that she was using unapproved chemicals in the kitchen. The employer failed to establish that she

either knew or should have known that using the items was contrary to the employer's standards. Moreover, her manager was aware of her actions and did not advise her to discontinue using the products. At the point at which she was using the products, Ms. Licklider had not been trained on what was appropriate to use as cleaning agents in the deli. For the above reasons, the administrative law judge concludes that she did not deliberately and intentionally act in a manner she knew to be contrary to the employer's standards. Therefore, her conduct in using the unapproved products did not constitute misconduct.

The next most prior disciplinary action had occurred in January of 2004. This conduct would be too remote in time to be considered current acts in relation to the March 25 discharge date. After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Ms. Licklider should be disqualified from receiving job insurance benefits. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 13, 2004, reference 01, is hereby affirmed. Ms. Licklider was discharged by Wal-Mart but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/