

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI I COOK
Claimant

APPEAL NO. 10A-UI-08523-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 05/16/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 10, 2010, reference 01, which denied benefits based upon her separation from Wal-Mart Stores, Inc. After due notice was issued, a telephone hearing was held on August 2, 2010. The claimant participated personally. Participating on behalf of the claimant was her attorney, William Habhab. The employer, although duly notified, elected not to participate.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Lori Cook was employed by Wal-Mart Stores from March 26, 2001, until May 19, 2010, when she was discharged from employment. Ms. Cook held the position of full-time optician and was paid by the hour. Her immediate supervisor was Jessie Allen.

The claimant was discharged from employment after she authorized a replacement lens for a customer, believing that the customer's lens prescription remained in effect. When the claimant entered the transaction for the irate customer, a normal "pop up" screen did not appear to alert the claimant that the prescription had expired. Ms. Cook thus was unaware that she was violating company policy by attempting to provide this service to the company customer.

During this general period of time, the claimant, acting as a customer, had another associate order a pair of glasses. Ms. Cook was under the understanding that the prescription for the lenses would be updated by the claimant's eye doctor. Although the claimant had followed company procedure by having another individual place the order and handle the transaction, Ms. Cook was nevertheless discharged when the laboratory "canceled" the order because the expired lens prescription had not been updated as Ms. Cook's doctor had promised.

Prior to being discharged, the claimant had received no warnings or counseling from her employer and believed that she was performing both transactions following the employer's policies and procedures as she understood them.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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. Misconduct 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 or dishonesty 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). When it is in a party's

power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record shows that the claimant believed that she was following company policies and procedures when placing an order for an irate customer to replace a lens and when having another individual enter the transaction for Ms. Cook's purchase of eyeglasses as a customer. There being no evidence to the contrary, the administrative law judge concludes that the employer has not sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 10, 2010, reference 01, 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

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