

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA E PASSNO
Claimant

APPEAL NO: 06A-UI-08764-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08-06-06 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 24, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 18, 2006. The claimant did participate. The employer did participate through Tammy Raygor, assistant manager and Lindy Grimm, Co-Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work connected misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer service manager full time beginning June 15, 1995 through August 4, 2006 when she was discharged.

The claimant was discharged for violating the employer's confidentiality policy. The claimant told Ryan that another coworker he was friends with, Sara, was being investigated for theft. The claimant made this comment to Ryan on July 25. The claimant was overheard by another employee, Leona Miller, who reported her comment to Pat LeMar. The claimant denies telling Ryan and contends that her written statements admitting she made the comment were made under duress while she was being badgered during an interview conducted by Brian, the store's Risk/Loss Manager. After July 25 Sara did not work again. She was a no call-no show for her next shift, which was on July 25 and when she showed up to pick up her paycheck on July 27 she was discharged. The claimant's comments to Ryan did not hamper or adversely affect the employer's investigation. The claimant contends it was common knowledge among employees that Sara was suspected of theft. The claimant worked as a manager and was privy to investigations so that she could assign employees to the proper positions where they could be observed. The claimant had over 11 years as an employee and had no disciplinary history for any similar conduct or behavior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The administrative law judge is persuaded that the claimant did make a comment to Ryan about Sara, perhaps out of a misguided notion of trying to help a coworker. The administrative law

judge concludes that her statements given to the employer were truthful; she did admit making the comments. Additionally, the claimant was overheard making the comment by another customer service manager, Leona. However, the claimant's comments did not injure the employer's investigation or stop them from taking action against Sara. The decision to discharge Sara had been made prior to the claimant making any comment to Ryan. The claimant's actions are a violation of the employer's policy but the administrative law judge concludes that they represent an isolated instance of a lapse in good judgment. Although improper, the conduct does not rise to the level of disqualification by standards of either frequency or severity. 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). Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 24, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs