

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR C CUMMINGS

Claimant

APPEAL NO. 11A-UI-05304-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03-20-11

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 11, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 18, 2011. The claimant did participate. The employer did participate through Jason Nichol, Assistant Manager.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an overnight customer service manager full time beginning August 10, 1999 through March 2, 2011 when he was discharged. The claimant was discharged for falsification of his timecard. On March 2, 2011 he went to lunch and clocked out as he was required to do. When he returned from lunch he clocked back in when he returned to work but then manually adjusted his timecard so that it reflected a return to work time that was actually twenty minutes earlier than when he left the lunch room. The claimant was not allowed to work while in the lunch room. When the claimant was initially asked about the discrepancy he indicated that he had initially forgotten to punch back in when he returned to work. However, the employer review of their surveillance records indicates that the claimant punched in after he left the lunch room and then almost immediately thereafter changed his timecard to reflect a return to work time twenty minutes earlier.

The claimant had already been through the employer's disciplinary proceedings including being warned about returning late from lunch on February 12 when he overslept while at lunch. The next step in the employer's disciplinary policy was discharge as the claimant was last warned on June 19, 2011 for misconduct at the customer service desk. The claimant was discharged for falsification of his timecard.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant returned late from work on March 2, 2011 and changed his timecard to reflect that he returned on time. Such an action is a falsification of his timecard and is misconduct sufficient to disqualify him from receipt of unemployment insurance benefits.

DECISION:

The April 11, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css