

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES C TERRY**

Claimant

**APPEAL NO. 13A-UI-00907-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 12/16/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the representative's decision dated January 15, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held on May 8, 2013, in Davenport, Iowa. The claimant participated personally. The employer failed to appear. The record consists of the testimony of James Terry.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The claimant worked for the Sam's Club located on Elmore Avenue in Davenport, Iowa. The claimant was hired on March 3, 2011, as a full-time overnight merchandiser. The claimant's last day of work was December 18, 2012. He was terminated on December 19, 2012. He has no idea why he was terminated. He was told that they "had to let him go." This termination occurred after the claimant vented some frustrations about the way the job was structured. The claimant was never disciplined during the entire time he worked for the employer. The employer had an open door policy that allowed employees to have confidential communications without fear of retaliation.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is not a scintilla of evidence in this record to show misconduct. The employer did not appear for the hearing. The claimant testified that he does not know why he was terminated. He had never been disciplined during his employment for any reason. Since the employer was required to provide evidence of misconduct and did not do so, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated January 15, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css