

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DELORES M STEINBRECH**  
Claimant

**APPEAL NO. 13A-UI-02561-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/27/13  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated February 22, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on March 28, 2013. Claimant participated. The employer participated by Mr. Matt Linn, the store manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Delores Steinbrech was employed by Wal-Mart Stores, Inc. from October 4, 2011 until July 1, 2012 when she was separated by the employer. Ms. Steinbrech was employed as a part-time unloader and was paid by the hour. Her immediate supervisor was Mitch Richrch.

Ms. Steinbrech was injured in a non-work-related automobile accident on March 24, 2012. After being off work for a period of time for medical appointments with prior notification to the employer, Ms. Steinbrech returned to her normal job duties. The claimant was separated from her employment with Wal-Mart Stores by the employer on July 1, 2012 when the employer became aware that a light-duty lifting limitation had been imposed by the claimant's physician. The claimant was willing to continue working at that time and reasonably did not believe that the lifting limitation would affect her work because items normally lifted above her lifting limit were required to be a "team lift" by the company and other workers were available to assist on team lifting.

Prior to being separated by the employer, Ms. Steinbrech had been offered a position as a material handler. The claimant reasonably concluded that this job would cause her to exceed her lifting limitation. The claimant had also been offered a cashier position but that position

required the claimant to work on Saturdays. The employer had agreed at the time of hire not to assign the claimant to work on Saturdays because of the claimant's personal obligation that day. Both the material handler and the cashier jobs paid less than the most recent position held by the claimant.

Subsequently, Ms. Steinbrech received a full release from her physician. Upon attempting to claim her old job back, the claimant was informed that there was no work available.

#### **REASONING AND CONCLUSIONS OF LAW:**

In this matter the claimant did not voluntarily quit her employment but was discharged by the employer and the employer was unwilling to allow the claimant to continue working although the lifting limitation imposed due to the claimant's non-work-related previous injury did not limit the claimant from performing the normal duties of her job providing that the employer followed its own rule that required "team lifting" for items above the claimant's weight limitation. The employer had been aware of Ms. Steinbrech's non-work-related injury for a substantial period of time before the claimant's separation from the employment on July 1, 2012.

The question for the administrative law judge is whether the claimant was separated from employment under disqualifying conditions. She was 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 insurance benefits. 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 Ct. of Appeals 1992).

In this matter the employer made a management decision to separate the claimant from employment because of a previous non-work-related automobile injury that appears not to have affected the claimant's ability to do her assigned job. Although the employer had in place "team lifting" requirements that would not have required the claimant to exceed her light-lifting limitation, the employer chose for business reasons to separate the claimant from employment. When fully released and when the claimant attempted to reclaim her job, no work was available to her.

For the reasons stated herein, the administrative law judge concludes that the claimant was separated by the employer for no disqualifying reason.

**DECISION:**

The representative's decision dated February 22, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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