

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEROY WHITE

Claimant

APPEAL NO: 07A-UI-10218-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 09/16/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated October 26, 2007, reference 03, which held that Leroy White (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 26, 2007. The claimant participated in the hearing. The employer participated through Jamie Cumberworth, Assistant Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time cashier on February 26, 2002 but was most recently working as a part-time people greeter when he was discharged on September 20, 2007. He was discharged per the employer's progressive disciplinary policy. Employees are given a verbal warning, a written warning and a decision-making day before they are discharged based upon a final incident. A decision-making day is basically a one-day paid suspension. The claimant received his verbal warning on August 25, 2004 for poor job performance. He was reading a newspaper while working and not greeting customers. A written warning was issued on June 1, 2006 for the same issues. The claimant was rude and unfriendly to customers and was not greeting them as required. He received a decision-making day on May 23, 2007 for using his cell phone while working and for failing to give customers pink stickers for items to be returned to customer service. He was advised that was his final warning and any further problems would result in his termination.

The claimant was terminated on September 20, 2007 after he used an EAS (electronic alert system) wand on a customer's body, which is against policy. The wand deactivates products that cause the door alarm to go off. Certain products are to be deactivated at the registers when purchased but sometimes products are missed and the employee working at the front

door becomes aware of the problem when the door alarm goes off. A customer entering the store caused the alarm to go off and when he was subsequently leaving the store, the alarm went off again. The customer asked the claimant if he would use the wand to deactivate him and the claimant proceeded to do so even though he had been taught through computer based learning classes that it was against policy. A loss prevention associate witnessed the incident and another customer questioned management as to why the claimant had done this and was worried it was going to be done to all customers. The claimant admitted his actions but saw nothing wrong with what he did.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged per the employer's progressive disciplinary policy. Although the claimant's discharge was appropriate according to policy, his actions are not sufficient to warrant disqualification. He had received a verbal warning but it was in 2004, his written warning was in 2006 and he only received one warning in 2007. The final incident shows a lack of good judgment and failure to follow policy but there does not appear to be any wrongful or malicious intent. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. Consequently, work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated October 26, 2007, reference 03, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs