

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA M COON
Claimant

WAL-MART STORES INC
Employer

APPEAL 16A-UI-04787-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/03/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 19, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her being discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2016. The claimant, Kayla M. Coon, participated personally. The employer, Wal-Mart Stores, Inc., participated through Asset Protection Manager Esmeralda Carranza.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a Sales Associate in the Produce Department. Her employment began on May 12, 2012 and ended on April 4, 2016. Claimant's job duties included filling products from the coolers to the produce floor and moving trucks. Her direct supervisor was Aaron Payne.

On or about March 18, 2016, it came to management's attention that the claimant had taken a photograph of her direct supervisor at work, while she was supposed to be working, and then later posted it to her Facebook account. She titled the picture "when your boss looks like Bubbles" and then put laughing emojis after it. Claimant was referring to a character on the television show entitled "Trailer Park Boys" which focuses on three characters who live in a trailer park. Some of claimant's friends liked the posts and others thought it was petty. Claimant replied to one person's positive comments with "yes this is real life".

Claimant described the specific character of Mr. Bubbles as someone who talks weird, has similar glasses to her supervisor, is missing several teeth, and is funny. Claimant described the show as involving three redneck hillbillies who live in a trailer park. The show is intended to be a comedy. Mr. Bubbles is one of the three main characters.

Ms. Carranza described the show as focusing on three characters that live in a trailer park. The specific character of Mr. Bubbles is someone who is mentally impaired. The employer believed this violated its code of ethics because claimant was being disrespectful to her supervisor.

Employer also believed that this action violated their policy against using personal devices, including cell phones, at work during work hours. Claimant admitted that she received copies of both the cell phone policy as well as the ethics code regarding respect for your co-workers. Claimant admitted that she took the picture of her supervisor while he was working and while she was supposed to be working. Claimant posted the picture on Facebook after she was home from work. She took the picture at work knowing that she intended to use it later to post to Facebook.

Claimant had three other written disciplinary actions but each was for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was a discharge for job related misconduct. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant’s actions did not involve negligence. Her sole intent in taking the picture of her supervisor was to eventually post it to Facebook when she returned home, which she did that same day. Claimant knew when she was taking the picture that her post was going to be a comparison to the character Mr. Bubbles. Even claimant’s description of Mr. Bubbles is not flattering. Her attempt to compare her direct supervisor to this character was done as an insult and was disrespectful. It is clear from her posts that she intended this to be funny, at her supervisor’s expense. This is clearly substantial and a deliberate disregard of her employer’s interests.

Claimant violated the employer’s policy against using her cell phone to take a picture of her supervisor, without his consent, at work during her working hours. However, claimant then posted the picture while she was not at work and made an insulting comment about her direct supervisor for all of her Facebook friends to see and make comments on.

A claimant can be disqualified for benefits when their off duty conduct is a violation of a specific work rule. *Kleidosty v. Emp’t Appeal Bd.*, 482 N.W.2d 416 (Iowa 1992). The misconduct must be 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. 871 Iowa Admin. Code r. 24.32(1). Ms. Carranza testified that the employer’s policies provided that employees must be respectful of each other, whether they have differing opinions or not, and the employees should be professional and courteous to each other. Ms. Carranza also testified that claimant violated their social media policy by posting the picture during work hours. Lastly, claimant violated the employer’s cell phone use policy by using her cell phone while she was supposed to be working. No written policies were submitted exhibits but claimant admitted to knowing and understanding the policies. Claimant testified that she did not post the picture while she was at work. Claimant admitted that she did take the picture while she was supposed to be working, in clear violation of the employer’s policy.

The claimant’s conduct must be *in connection with the individual’s employment*. Iowa Code § 96.5(2). See *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). While claimant posted the picture to Facebook while she was off company premises and off company time, this did create harm to the employer’s interests as she was being disrespectful and degrading to her direct supervisor. She specifically referred to “her boss” in her post and it would have been clear to viewers that this picture was taken at work as Mr. Payne was working while she took the picture. Many of claimant’s friends thought the post was hilarious while some of her friends thought the post was petty. Either way, this posting had a harmful effect on the employer as she was clearly disrespecting her direct supervisor.

This is misconduct sufficient to warrant a denial of benefits without prior warning. As such, benefits must be denied.

DECISION:

The April 19, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/can