

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

PATRICIA R JONES
Claimant

APPEAL 22A-UI-16379-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

**OC: 07/24/22
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On August 22, 2022, the employer, Walmart, Inc., filed an appeal from the unemployment insurance decision dated August 11, 2022, (Reference 01) that allowed benefits. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on September 19, 2022. The claimant participated personally. The employer participated through Justin McClain, Asset Protection Coach, and Kristan Blanding, Senior Process Manager. Employer's Exhibits 1-5 were admitted to the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the employer discharge the claimant for job related misconduct?
Is the claimant overpaid benefits?
Should the employer's account be charged?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as an Entertainment Team Associate for Walmart, Inc., from August 12, 2019, until July 25, 2022, when she was discharged by the employer. She reported to Aaron Toskey. Her last day of work was July 25, 2022. On that day, the claimant was assigned to work both in her normal workspace in the Electronics Department and in the "Hot Spot" toward the front of the store. At the beginning of her shift, she took possession of a cash till and moved it from the front of the store to the Electronics Department. The employer's "Pickup and Deposit Controls Policy" generally requires that two employees conduct "Register Pickups," although movement of cash tills is not defined therein. Store personnel did not abide by this rule, and nothing in the policy addresses employee conduct in the process of moving cash tills. On her way to the Electronics Department, and just outside the boundaries of it, the claimant saw a colleague who had been working in the "Hot Spot" and was struggling to move multiple shopping carts with merchandise to the front of the store. The claimant placed merchandise over the cash till to protect it and went to assist the colleague. The claimant intended to return to the till and move it to the register but was advised a short time later that it had been discovered by a Team Lead and secured.

Later that same day, the claimant was called to a meeting with store Asset Protection personnel and discharged for leaving the till unsecured.

In deciding to terminate the claimant's employment, the employer relied further upon a previous incident from April 2022, in which the claimant allowed a customer to take possession of a \$69.00 pair of wireless headphones before it was paid for. The customer paid for the item and the store experienced no loss, but the employer issued the claimant a written warning for leaving the merchandise unattended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the employment for no disqualifying reason. Benefits are allowed.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosperv. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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).

Here, the claimant was fired because she left a cash till unsecured near her work area for a short period of time, and it happened to be discovered by a member of management. The administrative law judge is not persuaded that the employer's policies regarding moving and securing cash tills are regularly observed or enforced, nor that the claimant committed any volitional, intentional act to warrant a finding of disqualifying misconduct. The claimant's actions with regard to the cash till could perhaps be considered careless, but there is no evidence of wrongful intent. Rather, it appears that the claimant was responsible for several areas at once and was trying to assist her co-workers. The incident from April 2022 appears to be wholly dissimilar and nothing in the record suggests that the act was recurrent.

The employer has not met its burden to show that the claimant committed deliberate acts with wrongful intent serious enough to warrant denial of unemployment insurance benefits.

The remaining issues to be determined are whether the claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. The claimant is eligible for benefits, so those matters are moot. The employer did not participate in the fact-finding and did not provide sufficient written information to the Department before the fact-finding interview. However, as the claimant is eligible for benefits, the employer's account is not relieved of the charges in any case.

DECISION:

The August 11, 2022, (Reference 01) unemployment insurance decision allowing benefits is **AFFIRMED**. The claimant was discharged from the employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



David J. Steen
Administrative Law Judge
Iowa Department of Inspections & Appeals
Administrative Hearings Division - UI Appeals Bureau

October 11, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.