

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KAREN M RUDY
Claimant

APPEAL NO. 19A-UI-04900-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 05/12/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Karen Rudy (claimant) appealed a representative's June 10, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from work with Walmart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2019. The claimant participated personally. The employer participated by Hanna Karim, Assistant Store Manager, and Tammy Hennick, Personnel Coordinator. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on May 18, 2004, as a full-time cashier. The employer has policies regarding dress code and disciplinary actions. If a person receives four disciplinary actions in a twelve-month period, she will be terminated.

On August 6, 2018, the employer issued the claimant a warning for complaining about her work in a raised voice to customers and co-workers. The employer has a policy of allowing employees to go home when they are ill. The claimant was ill and did not go home. On August 15, 2018, the employer gave the claimant a warning for making disparaging remarks about the employer on a telephone call within the hearing of customers and co-workers. When the claimant received the call from a regional member of management, she did not alert him that she was standing in a public portion of the store. When she received the warning, she did not tell the employer she was talking to a regional member of management. The warnings indicated that further infractions could result in the claimant's termination from employment.

The employer talked to the claimant on November 29, 2018, about personal hygiene issues. On April 15, 2019, the employer issued the claimant a warning for reoccurring personal hygiene

issues and unprofessionalism with co-workers. She was warned that another issue could result in her termination from employment.

On May 3, 2019, the claimant was working at a cash register. She turned the bag carousel and it hit a child. A woman reached out to stop the carousel and the claimant turned the carousel again. The carousel hit the child again. The woman complained to the manager about the claimant. Management watched a video of the incident and saw the carousel hit the child twice. On May 3, 2019, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job*

Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

The testimony of the employer and the claimant was not the same. The administrative law judge finds the testimony of the employer to be more credible. The claimant's testimony was internally inconsistent.

DECISION:

The representative's June 10, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs