

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMGAD Z BOTROS
Claimant

WALMART INC
Employer

APPEAL 19A-UI-05640-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/09/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On July 16, 2019, the claimant filed an appeal from the July 9, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was commenced on Thursday, August 8, 2019, and was continued to Wednesday, August 14, 2019, due to exhibit issues. The claimant, Amgad Botros, participated personally and was represented by attorney Jeffrey Lipman. The employer, WalMart, Inc., participated through witness Rose Hanke, Store Manager; and Jackie Boudreaux of ADP represented the employer. Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for WalMart on July 17, 2019. He was employed with this employer full-time, most recently as a cashier. Claimant was employed until June 1, 2019, when he was discharged for swearing at a co-worker.

Sometime during the last week of May, claimant was taking out the trash along with another employee. Claimant and this other employee encountered a third employee ("co-worker"). Co-worker greeted the employee that was with claimant, but he did not greet claimant. Claimant then made a face at co-worker. At that point, co-worker started spewing profanity toward claimant, saying derogatory things about claimant's wife and daughter. Co-worker also threatened claimant and said he would kill him once there were no cameras around. Claimant replied, "Fuck you." Claimant and the employee eventually walked away from co-worker.

Management learned about this incident from a witness. Hanke conducted an investigation by interviewing everyone who was involved and everyone who witnessed the altercation. When

Hanke interviewed claimant, he admitted using profanity toward co-worker. When the investigation concluded, both claimant and co-worker were discharged.

Claimant had a prior warning for inappropriate comments at work. In January 2019, claimant was checking out a customer who was purchasing a belt. Claimant wrapped the belt around his hands and commented that it was a good belt and would be good for the customer to use to beat his girlfriend. Claimant received a final warning after this incident. He was aware that his job was in jeopardy for inappropriate conduct at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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).

In this case, claimant was discharged for using profanity toward a co-worker. While claimant was understandably upset by what his co-worker was saying to him, he could have immediately walked away instead of staying and engaging with the co-worker. Claimant had been warned previously about appropriate work behavior, and he admits that he was aware his job was in jeopardy. The administrative law judge finds that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The July 9, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn