

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACY J FINCH
Claimant

WAL-MART STORES INC
Employer

APPEAL 15A-UI-09462-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 12, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2015. Claimant participated. Employer participated through assistant manager Casey Suite.

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 was employed full-time as a cashier from April 23, 2014, and was separated from employment on June 24, 2015, when she was discharged.

On June 24, 2015, claimant found a wallet in the parking lot that did not belong to her. Claimant picked up the wallet and brought it into her car. Claimant took the money (\$16.00) out of the wallet and put the cash in her glove box. Claimant then took the wallet, minus the cash, into the store and turned it in to an employee to try to locate the owner. There was a discount card with the owner's name on it inside the wallet. Claimant knew the owner of the wallet was an associate (employee). Claimant and the associate (owner of the wallet) were both working on June 24, 2015. The associate verified that the wallet was his, but that his license, credit card, and money were missing. Ms. Suite watched the security video of claimant picking up the wallet, get in her car, get out of her car, and then come inside the store and turned it in. Ms. Suite testified the video did not show what happened inside claimant's car. Claimant was discharged for theft. The money was recovered from claimant's glove box.

The employer does have a policy regarding theft, which is in the handbook. The policy states that theft is an automatic termination. The handbook is reviewed during orientation. Claimant went through orientation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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).

The employer has presented substantial and credible evidence that claimant took money from a coworker's wallet, having no right or privilege to the money, with no intent on returning the money. Claimant found the coworker's wallet in a parking lot and knew whose wallet it was.

Claimant then removed the cash from the wallet and placed it in her glove box prior to turning it in to find the wallet's owner. The employer has a duty to protect the safety of its employees and their property. Claimant's theft of a coworker's property was contrary to the best interests of the employer and its employees. The theft is misconduct even without prior warning. Benefits are denied.

DECISION:

The August 12, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs