

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURIE L OWEN
Claimant

WALMART INC.
Employer

APPEAL 22A-UI-00400-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/07/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a finding the claimant was discharged due to absenteeism. The parties were properly notified of the hearing. A telephone hearing was scheduled for January 25, 2022. The hearing was postponed to allow the parties time to exchange exhibits. After due notice was issued, a hearing was held on February 16, 2022. Claimant Laurie L. Owen participated and testified. John Blum also testified on behalf of claimant. Employer Walmart, Inc. participated through witness Abby Anderson and was represented by Kristan Blanding. Claimant's Exhibits A and B were received. Employer's Exhibits 1 – 4 were received.

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 deli and bakery team associate from November 20, 2014, until November 12, 2021, when she was discharged.

Employer maintains a policy that prohibits discrimination and harassment based on a person's sexual orientation. See Exhibit 2, 3. Claimant was aware of the policy. See Exhibit 4. When employer received a harassment complaint, the complaint is investigated by a manager and the results are sent to employer's ethics department for a final determination on the appropriate disciplinary steps.

The final incident leading to discharge occurred in late September 2021. In October 2021, employer received a complaint that claimant made a derogatory comment about an employee based on that employee's sexual orientation during a conversation with a different employee. Employer investigated the complaint. During the investigation, employer asked claimant if she made any derogatory statements based on a person's sexual orientation. Claimant denied

making any derogatory statements. Claimant was not provided with the specific statements or any details regarding the conversation, including when it took place. She admitted joking around with a homosexual employee one year earlier.

On November 12, 2021, employer discharged claimant for violating its harassment and discrimination policy for making sexual orientation-based comments in September 2021.

Claimant received no disciplinary action for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Here, employer conducted an investigation into a complaint but did not provide claimant with specific information relating to the allegations against her. Not only did claimant deny making any derogatory comments, but she was also not given an opportunity to know the exact allegations made against her. Employer has failed to establish claimant engaged in job-related misconduct. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Benefits are allowed.

DECISION:

The November 24, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie Adkisson
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March 8, 2022
Decision Dated and Mailed

sa/mh