

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN G ALDAPE
Claimant

APPEAL NO. 12A-UI-04815-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/01/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 24, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 21, 2012. The claimant participated. Participating as a personal representative for the claimant was Larold Witt, claimant's stepfather. The employer participated by Mr. Tony Lai, assistant asset manager, and Mr. Adam Brown, area supervisor.

ISSUE:

At issue is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jonathan Aldape was employed by Wal-Mart from October 22, 2008, until April 4, 2012, when he was discharged from employment. Mr. Aldape worked as a part-time shopping cart attendant and was paid by the hour. His immediate supervisor was Mike Steamster.

Mr. Aldape was hired as an employee by Wal-Mart Stores under a program for individuals with "special needs" related to physical or psychological issues. Mr. Aldape was discharged for violating the company's policy that prohibits employees from engaging in aggressive behavior or using inappropriate language in the performance of their duties.

On or about April 3, 2012, the claimant responded to a disruptive individual who was loudly complaining and using profanity because a motorized shopping cart was not available to him at the time. Mr. Aldape recognized the individual and attempted to soothe the individual and explain that the motorized shopping carts are not available at times during busy portions of the day. When the individual unexpectedly responded to Mr. Aldape's offers of help by directing a vile statement to Mr. Aldape personally, the claimant responded in the spur of the moment by making a similar statement and hand gesture to the individual. The claimant's statement and hand gesture was made as an immediate response to show Mr. Aldape's disdain for the individual's statement and as an unexpected response to the statement.

Because Mr. Aldape's statement and gesture were witnessed by the area manager and were considered to be a serious violation of company policy, a decision was made to terminate Mr. Aldape from his employment. It does not appear the claimant had been warned or counseled about similar behavior in the past and had been considered to have been a good employee until the incident in question.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of establishing disqualifying job misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. See Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. See Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa 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 in establishing job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The evidence in the record establishes that Mr. Aldape was hired on a “special needs” program and was considered to be a good employee until an isolated incident took place on or about April 3, 2012. On that date, the claimant was attempting to calm an upset individual by explaining the reason that a motorized cart was not immediately available. In response to the individual’s unexpected use of vile language personally directed at Mr. Aldape, Mr. Aldape responded with a similar comment to the individual and accompanied it with a hand gesture. Although the administrative law judge does not condone or sanction the use of inappropriate language or hand gestures, it is the conclusion of the administrative law judge, based upon the evidence in the record, that the claimant’s conduct was an isolated instance of poor judgment in an otherwise unblemished previous employment record. The evidence does not establish that the claimant intentionally violated the company’s rules but that the claimant, in effect, made only a form of excited utterance in response to the vile personal attack made by the customer.

While the decision to terminate Mr. Aldape may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant’s conduct during the isolated instance in question did not rise to the level of intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative’s decision dated April 24, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw