

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JADI N GILLESPIE**

Claimant

**APPEAL 16A-UI-05688-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 04/17/16**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 9, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 7, 2016. Claimant participated. Employer participated through store manager, Jennifer Browning.

**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 an assistant manager from December 15, 2006, and was separated from employment on April 20, 2016, when she was discharged.

Claimant was discharged violating the associate purchase policy. The employer has a written associate purchase policy; an associate may not knowingly purchase a mispriced item. Associates are required to purchase items for the appropriate price, minus their 10% discount. Claimant was aware of the policy. Over two years ago, claimant had been disciplined for violating the policy. The policy is also located on the computer, which claimant had access to. The policy provides that violation of the policy may result in discharge.

Claimant's discharge resulted from her purchase of a particular tool chest and the subsequent return of the tool chest in an exchange for a different tool chest. Prior to March 12, 2016, the price of the tool chest claimant originally purchased was \$70.00. On March 12, 2016, the employer marked the tool chest back up to \$98.00. In the morning on March 13, 2016, claimant purchased the tool chest for \$70.00. The price for the tool chest in the system was stored at \$98.00, but claimant had the cashier at the register override the stored price of \$98.00 and sell it at a price of \$70.00. Claimant was a supervisor at the store. Claimant then paid the \$70.00 for the tool chest and left with the tool chest. Later, on March 13, 2016, claimant returned the tool chest without a receipt at the \$98.00 price as an exchange for a different tool chest. Claimant returned the tool chest to a different cashier. The new tool chest was priced at \$148.00. Claimant used three different payment methods to make up the difference between the \$98.00

return price and the \$148.00 for the new tool chest. If claimant had used a receipt recorded on her cellphone, the transaction would be scanned as a receipt refund. The transaction on March 13, 2016 was a no receipt refund.

The employer became aware of the incident when the asset protection manager was going over the override reports. The asset protection manager began an investigation for approximately two weeks before speaking with claimant. The market asset protection manager spoke with claimant on April 15, 2016. Claimant stated she did not look at the receipt to see it was returned at the \$98.00. The employer put claimant on suspension, with pay, on April 15, 2016. Claimant was then discharged on April 20, 2016.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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 purchased a tool chest for \$70.00 and then exchanged the same tool chest at a price of \$98.00, which resulted in profit of \$28.00 for her. Ms. Browning credibly testified that had claimant used her cellphone to provide a receipt, it would have been recorded as a receipt refund; however, claimant's exchange was documented as a no receipt refund.

Claimant's transaction resulted in her profiting \$28.00 from the employer and the employer suffering a \$28.00 loss. Claimant's conduct was contrary to the best interests of the employer. This is disqualifying misconduct even without prior warning. Benefits are denied.

#### **DECISION:**

The May 9, 2016, (reference 01) unemployment insurance decision is affirmed. 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.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs