

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID FREEBURG
Claimant

APPEAL NO. 14A-UI-03440-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/02/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 19, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 22, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with a representative and witness, Morris Hurd. Teresa Ohnesorge participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a maintenance employee from March 23, 1993, to March 1, 2014.

The claimant had received a written warning in December 2013 for taking an extra break without permission. On one other occasion, the claimant was verbally counseled about taking an extra break.

The claimant has problems with his leg and hip and has had hip surgery. On February 23, the claimant took about an 18-minute break instead of the normal 15-minute break. His hip was giving him pain and he decided that he needed to sit down to recover. There was no supervisor around to ask about taking the break. The claimant completed all his cleaning tasks for the day.

The employer discharged the claimant on March 1, 2014, for taking extra time for his break

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

No willful and substantial misconduct has been proven in this case. The claimant took longer than his normal break, but it was due to a health issue and there was no supervisor in the area to get permission. He completed all his work for the day.

DECISION:

The unemployment insurance decision dated March 19, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css