

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MYRON L FLATHERS

Claimant

APPEAL NO. 11A-UI-06244-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/03/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated April 26, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on June 8, 2011. The claimant participated personally. The employer participated by Mr. Patrick Peterson, store manager.

ISSUE:

At issue is whether the claimant was discharged for 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: Myron Flathers was employed by Wal-Mart Stores from July 17, 2007, until March 30, 2011, when he was discharged from employment. Mr. Flathers last held the position of full-time tire and lube bay supervisor. The claimant was employed full-time and paid by the hour.

Mr. Flathers, as well as a number of other employees, were discharged based upon a failure to follow company policy by documenting that a "Figure 8" driving test had been done on each repaired vehicle and that a third quality check had been accomplished to ensure that the vehicle's lug nuts were tightened to the correct specifications.

Due to short staffing for an extended period, Mr. Flathers had been told by Brad Gray, a supervisor that Mr. Flathers believed had management authority, it was unnecessary to perform the Figure 8 test due to staffing levels and work volume. Mr. Flathers had continued to perform the third quality check by personally ensuring that each vehicle's lug nuts were properly tightened before they left the premises. Mr. Flathers believed that Mr. Gray had management authority over him because he had been told by management to bring his concerns to Mr. Gray and because the claimant was personally aware that Mr. Gray held a supervisory position within the company.

Although the final incident in which the full quality assurance check had not been completed was March 9, 2011, the matter was not brought to the claimant's attention until March 30, 2011, when he was interviewed and discharged.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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 proof in 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). Misconduct serious enough to warrant the discharge of an employee is not necessarily in all cases serious enough to warrant the denial of unemployment insurance benefits. Such misconduct must be "substantial." While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In the case at hand, the evidence in the record establishes that the company had set procedures to ensure that the lug nuts securing wheels on vehicles that had been repaired were properly tightened before the vehicle was returned to the customer. Normal procedure required that a final, third check be performed that included a "Figure 8" drive and a third tightening of the wheels lug nuts. Based upon the volume of business and the lack of staff, the claimant had been specifically apprised by a person that he reasonably believed to have management authority that the Figure 8 test could be bypassed and the quality assurance verified by checking the lug nuts a third time and verified as being correctly tightened.

Although the final incident that the employer alleged caused the claimant's discharge from employment occurred on March 9, 2011, the claimant's discharge was delayed until March 30, 2011, because of delays in completing the investigation.

While the decision to terminate Mr. Flathers may have been a sound decision from a management viewpoint, the administrative law judge concludes that the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits. Mr. Flathers reasonably thought that he was in compliance with company policy based upon information that had been given to him by an individual who the company had cloaked with management authority. The claimant continued to perform the essential portion of the quality assurance third check and believed that he had been authorized to bypass the Figure 8 driving portion of the test due to lack of staffing and business conditions. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 26, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw