

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNE M JONES
Claimant

WALMART INC
Employer

APPEAL 24A-UI-02688-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/04/24
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Walmart Inc., filed an appeal from a decision of a representative dated February 26, 2024, (reference 01) that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on April 2, 2024. The claimant, Anne Jones, participated personally. The employer participated through Store Manager Jason Sanders. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant was discharged for disqualifying, job-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked as a full-time people lead for Walmart Inc., from April 17, 1990, until January 2, 2024, when she was discharged. As a people lead, the claimant performed a similar role as a human resources officer, she was responsible for scheduling, training, orientations, assisting with benefits, and she was involved in decisions about hiring and firing employees.

The employer has an employee manual that contains a code of conduct policy. The code of conduct policy requires all employees to treat others with respect. The claimant received a copy of the employee manual and she was familiar with the employer's code of conduct policy.

In early-2023, Employee A, whom the claimant had worked with for several years, changed their name and began a transition to better conform with their gender identity. The claimant had a positive working relationship with Employee A and the claimant always strove to refer to Employee A by their name and pronouns. However, on a few occasions, the claimant mistakenly referred to Employee A by their dead name. Whenever the claimant made this mistake, she would immediately apologize to Employee A and Employee A always quickly forgave the claimant for her mistake.

Prior to October 20, 2023, the claimant had never received any workplace discipline in her more than 33-years years of employment with Walmart Inc. However, on October 20, 2023, the claimant was involved in the employer's decision to terminate Employee A's employment. After Employee A's termination, the claimant felt that several employees were upset with her about her role in Employee A's termination.

Three days later, on October 23, 2024, the employer called the claimant into a meeting. During the meeting, the employer informed the claimant that, while reviewing surveillance video from approximately three months prior, an employee witnessed the claimant hug a store associate and tap the associate on the leg. The employee who reviewed the video reported the incident to the employer. After reviewing the video, the employer determined that the claimant's physical contact with the associate had been inappropriate. The employer then issued the claimant a final written warning for her conduct.

In early-November 2023, the claimant's store manager received an anonymous letter alleging that in early 2023, the claimant had intentionally misgendered and used Employee A's dead name. The anonymous letter did not provide the names of any witnesses to this alleged conduct. On November 7, 2023, the store manager called the claimant into a meeting and questioned her about the allegation. During the meeting, the claimant acknowledged that on a couple of occasions she did mistakenly use Employee A's dead name. However, she explained that using their dead name had been an accident and she immediately apologized to Employee A for her mistake. After interviewing the claimant, the store manager sent his report to the employer's corporate office and the employer closed the investigation.

In December 2023, the employer received a second anonymous letter with the names of four employees who allegedly witnessed the claimant intentionally, repeatedly misgender Employee A. The employer's corporate office instructed the store manager to reopen the investigation and question the witnesses. The store manager interviewed each of the witnesses individually. During the interviews, the witnesses provided nearly identical accounts of having witnessed the claimant repeatedly misgender Employee A and refer to Employee A by their dead name.

After interviewing the witnesses, the store manager wrote a report detailing each witness's account. In the report, the store manager noted that the employees' accounts were "eerily alike" and felt coordinated. The store manager also noted that one of the witnesses interviewed worked the night shift, which did not overlap with the claimant's work schedule. Thus, it was unclear when the employee could have observed the claimant interact with Employee A. Based on the interviews, the store manager concluded the accounts were likely coordinated and that he believed the employees were retaliating against the claimant.

On January 2, 2024, the employer's corporate office informed the store manager that the witnesses he interviewed had substantiated the allegations contained in the anonymous letter and that the employer had decided to terminate the claimant's employment. Later that day, the store manager called the claimant into a meeting and informed her that her employment was being terminated effective immediately due to violations of the employer's code of conduct policy.

The claimant's administrative records indicate the claimant filed her original claim for unemployment insurance benefits with an effective date of February 4, 2024. Since filing her initial claim, the claimant has filed no weekly continued claims and has received no unemployment insurance benefits. The employer participated in the fact-finding interview with Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* 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 on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job-related 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). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990); however, "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. 85-919, Iowa Ct. App. Filed June 25, 1986).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation.

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I allocated greater weight to the claimant's testimony, as her testimony was detailed, consistent, and she had direct, first-hand knowledge of the alleged interactions at issue. Specifically, the

undersigned finds credible the claimant's testimony that she never intentionally misgendered or referred to Employee A by their dead name.

In this case, while the claimant acknowledges that on a few occasions she mistakenly referred to Employee A by their dead name, the claimant credibly testified that, whenever she did so, she immediately apologized to Employee A and strove to correct her mistake. There is no evidence that the claimant willfully or wantonly disregarded the employer's instructions or the standards of behavior the employer had a right to expect of her. Rather, the evidence supports that the claimant's mistakes arose from inadvertence or ordinary negligence. While carelessness can result in disqualification, it must be of such degree of recurrence as to demonstrate substantial disregard for the employer's interests. The claimant's conduct in this instance does not meet that standard. As such, the employer has not carried its burden of establishing that the claimant engaged in disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

As the claimant's separation was not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The February 26, 2024 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment on January 2, 2024, for no disqualifying reason. The claimant is allowed benefits, provided she remains otherwise eligible. The issues of overpayment and chargeability are moot.



Patrick B. Thomas
Administrative Law Judge

April 12, 2024
Decision Dated and Mailed

PBT/jkb/

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.