

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ETHEL S COOPER**

Claimant

**APPEAL NO. 14A-UI-12929-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 11/16/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ethel Cooper (claimant) appealed a representative's December 9, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 14, 2015. The claimant participated personally. The employer participated by Matthew Wheeler, Assistant Store Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 24, 2003, as a service desk associate. The employer has on-line policies but the claimant was unaware of the policies' existence. She annually participated in required computer based learning.

On April 19, 2012, the employer issued the claimant a written warning for cashing a check and accidentally giving the check back to the customer. On February 21, 2013, the employer issued the claimant a written warning for cashing a payroll check for cash and loading the cash amount on a payroll debit card. This was an issue with the cash register that employees brought up to management repeatedly. On March 10, 2014, the employer issued the claimant a written warning for absenteeism. All the claimant's absences were due to medical issues and properly reported. On July 15, 2014, the employer issued the claimant a written warning for violation of policy after following a manager's directive. The claimant's manager received a call from someone who claimed to be from the employer's home office. The manager handed the telephone to the claimant and told her to follow the caller's instructions. The caller was not from the employer's home office and the claimant transferred money away from the company at the manager's request. For each warning, the employer notified the claimant that further infractions could result in termination from employment.

On November 21, 2014, the claimant had ten customers in line. The customer she was helping wanted her to transfer balances from a number of prepaid debit cards to one debit card in individual transactions. The customer claimed other associates had performed this transaction in the past. The claimant understood the rules prohibited this, unless it was done in one transaction or if a manager instructed her to do otherwise. The claimant asked her manager for assistance. The manager told the claimant to do what the customer asked. The claimant followed the manager's directive. Later that day the employer terminated the claimant for following the manager's instructions. The manager was not terminated.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service,

351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. There is no misconduct when an employee follows an employer's reasonable instructions. The claimant had no reason to wonder if or why her manager's instructions might be unreasonable. She did what she was told and was rewarded with a termination. The manager, who knew the policy was wrong and made the decision to violate the policy, continues to work for the employer. The employer unfairly assigned the blame for the action to the claimant. The employer did not meet its burden of proof to show the claimant's misconduct. Benefits are allowed.

**DECISION:**

The representative's December 9, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs