

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TEQUILA M LOVE
Claimant

WAL-MART STORES INC
Employer

APPEAL 15A-UI-08673-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/28/15
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 23, 2015, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2015. Claimant did not participate. Employer participated through (representative) Travis Dunbar, Asset Protection Manager and Luella Guild, Training Coordinator. Employer's Exhibit One was entered and received into the record.

ISSUES:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a cashier beginning on April 11, 2015 through June 2, 2015 when she was discharged.

On May 5, another associate came through the claimant's cashier line. Associates are not allowed to ring up their own purchases. The claimant rang up her purchase of a bottle of Snapple. When the associate handed her money for the purchase, the claimant pushed the money back at her and voided the transaction. The claimant later told the employer she was going to pay for the bottle of Snapple which does not make sense because she voided the transaction. The employer was alerted to the transaction by the void receipt. On May 6, Mr. Dunbar watched the surveillance tape of the transaction and reported his finding to the supervisor. The supervisor decided to take no action as the transaction was small, but did require that Mr. Dunbar continue to monitor the claimant's transactions.

On May 9, the same associate came through the claimant's checkout line. She had a ranch cup that had a black and white bar code on it that is a clear signal to the cashier that the product must be rung up. The claimant failed to ring up the .50 cent ranch cup. Mr. Dunbar discovered the transaction on May 10 and again reported it to his supervisor. The employer again determined to take no action because they believed the total amount of the claimant's theft at that time was less than five dollars.

Mr. Dunbar continued to monitor the claimant's transactions until June 2. At that time Mr. Dunbar's supervisor determined that even though additional surveillance had taken place, and no additional theft discovered, the project was taking too much of Mr. Dunbar's time and the claimant should be discharged. The employer took over three weeks to make the decision to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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.

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 act or acts. The termination of employment must be based upon a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

The administrative law judge is persuaded that the claimant at the very least was not following company procedures for ringing up merchandise. She gave away merchandise to a coworker that was not hers to give essentially depriving the employer of income from those two sales. The employer knew about both incidents by May 10 but did not even speak to the claimant about the situation until June 2, when they had already made the decision to discharge. The employer then let over three weeks pass prior to acting on the claimant's misconduct. The employer learned no new information between May 10 and the discharge on June 2. Under these circumstances the administrative law judge cannot find that the employer acted to discharge upon a current act of misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 23, 2015 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css