

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SUSAN E SLANEY
Claimant

APPEAL NO: 19A-UI-02103-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 02/17/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 6, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 24, 2019. The claimant participated in the hearing with Attorney Bret Larson. Tiffany Weber, Co-Manager and Lisa Elrod, Personnel Coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cap team I for Walmart, Inc. from June 17, 1991 to February 16, 2019. She was discharged for allegedly violating her co-workers' privacy.

The claimant was demoted from jewelry and accessories department manager because of work performance concerns January 12, 2019. She was given her choice of approximately five other positions to work in and very specifically asked which jobs would allow her to work 40 hours per week. She was told she would receive 40 hours per week in the cap team I position as there was always work in that department. As time passed, the claimant was not receiving 40 hours. On February 16, 2019, she accessed her co-workers' schedules and printed them off the employer's computer system. She began asking her co-workers if they were full-time or part-time employees and showed the schedules to her immediate supervisor. The employer learned about the situation and brought the claimant to the office. The store manager told her she violated her co-workers' privacy and the employer's respect for the individual and her employment was terminated. The claimant's access to the employer's Smart computer system was never changed after her demotion and she did not realize she was doing anything wrong by looking at the schedules.

The claimant received a second written warning September 7, 2018, for job performance and a third written warning for failing to respect the individual after she yelled at an associate several yards away and threw her jewelry keys at her.

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.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (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).

The claimant's access to the schedules had not been changed after her demotion and as far as she knew everyone could look at that information. She printed the schedules to show her manager and ask why she was not getting 40 hours per week as promised when she accepted the position. The claimant had no other intent besides trying to bolster her argument that she was the only one in her department not receiving 40 hours. The employer bears some culpability in the matter as it did not block the claimant from seeing all of her co-workers schedules as it was apparently supposed to when she was demoted and given that fault could be apportioned to both parties, the claimant could have been warned and educated on the fact the employer considers looking at other employees' schedules a violation of their privacy.

The evidence presented does not demonstrate that the claimant's actions rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 6, 2019, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn