

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**PAMELA SCHALLER**  
Claimant

**WALMART ASSOCIATES**  
Employer

**APPEAL NO. 22A-UI-01757-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/07/21  
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On December 20, 2021, the claimant, Pamela Schaller, filed a timely appeal from the December 10, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on November 4, 2021 for violation of a known company rule. After due notice was issued, a hearing was held on February 25, 2022. Claimant participated. Devin Collins represented the employer and presented testimony through Lucas Eddy. Exhibits 1 through 6 were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Pamela Schaller, was employed by Walmart, Inc. as a Digital Personal Shopper at the Walmart Store in Keokuk until November 4, 2021, when the employer discharged her from the employment. The claimant began her employment with Walmart in 2011 and held several positions with the employer over the course of her employment, including multiple department supervisor positions.

On October 13, 2021, the claimant used a Walmart return/refund software application to process 46 separate returns of clearance merchandise she had purchased with her debit credit card in connection with six purchase transactions she made during the period of August 3 through August 27, 2021. Though the items were part of just six purchase transactions, the claimant elected when processing refunds to unnecessarily separate out all but two of the individual items into its own return transaction. The claimant was well familiar with how the refund/return software app worked. The claimant was aware that she could process a return of all the items from a single purchase receipt in a single refund transaction. However, the claimant intentionally elected to process each item as its own return transaction avoid triggering

the app's directive to return the items to the store. By separating out the transactions, the claimant was able to both secure a refund for the item and keep the item. The total amount credited to the debit card in connection with the 46 refund transactions was \$62.79.

The claimant's October 13, 2021 conduct came to the employer's attention sometime between October 20 and 25, 2021, when Lucas Eddy, Asset Protection Assistant Manager over Safety and Security, reviewed refund transactions and observed the high number of transactions all associated with the same credit/debit card. Mr. Eddy then reviewed video surveillance records of the purchases and recognized Ms. Schaller as the person making the purchases.

On November 4, 2021, Morgan Danielson, Asset Protection Manager, interviewed the claimant as part of the employer's investigation into the refund transactions. Mr. Eddy was present for the interview. During the interview, the claimant professed ignorance of any wrongdoing in connection with the refunds. The claimant provided a written statement in connection with the interview. The claimant asserted in the written statement that she had been "super busy" and "super stressed" with family matters and for that reason had not returned any of the refunded items to the Walmart store. The claimant offered the further excuse that she was taking a new medication and was still adjusting to the medication. The employer deemed the claimant to have violated the employer's ethics policy prohibiting intentional dishonesty, deception, and fraudulent activities. The claimant had participated in ethics training many times over the course of her employment and consistently earned high marks indicating mastery of the policy material. The asset protection staff brought their findings to the attention of the store manager, who discharged the claimant on November 4, 2021.

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

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 871-24.32(4).

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 Ct. 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 weight of the evidence establishes a November 4, 2021 discharge for misconduct in connection with the employment. The weight of the evidence indicates that the claimant knowingly and intentionally perpetrated a fraud upon the employer whereby claimant was able to secure refund money without returning merchandise to the employer, to the claimant's financial benefit and to the employer's financial loss. The claimant's assertion of ignorance regarding effective and proper use of the return/refund app is not credible. Nor is the claimant's assertion regarding ignorance of the employer's ethics policy prohibiting intentional dishonesty credible. The claimant worked for the employer for a decade. The claimant had participated in many computer-based ethics training activities. The claimant demonstrated mastery of the ethics policy material by earning perfect scores on graded learning modules. The claimant was also well experienced in using the refund app. At one point in the hearing, the claimant seemed

to slip when answering an employer question regarding the app. The claimant initially answered that she knew to “save” a line-time return. The claimant quickly corrected herself and re-asserted that she had to “submit” each line-item refund separately. The weight of the evidence indicates the claimant was intentionally manipulating the refund app. Based on the 46 individual self-dealing refunds the claimant processed October 13, 2021, the employer reasonably concluded the claimant’s October 13, 2021 conduct was theft from the employer by fraud. The claimant’s conduct indicates a willful and wanton disregard of the employer’s interests and constitutes disqualifying misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant’s weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

**DECISION:**

The December 10, 2021, reference 01, decision, is affirmed. The claimant was discharged on November 4, 2021 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant’s weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

---

James E. Timberland  
Administrative Law Judge

March 11, 2022  
Decision Dated and Mailed

jet/scn