

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL W THOMES
Claimant

APPEAL NO: 06A-UI-08763-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 08/22/06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's August 22, 2006 decision (reference 01) that concluded Michael W. Thomes (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 18, 2006. The claimant participated personally and through William Rasmussen, Attorney. The employer participated by Diane Barton, Human Resources Manager. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence

ISSUE:

The issue is whether the claimant was discharged for misconduct and, therefore, is not eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 29, 2003, as a full-time unloader/processor. On October 30, 2003, the claimant signed for receipt of the employer's Alcohol and Drug Abuse Policy. The Policy indicates "The conviction under any criminal drug statute, or failure to notify the Company of any arrest or conviction under any criminal drug statute within three (3) days after the arrest or conviction will result in termination of employment". The policy was put in place to create a safe work environment. The claimant received no warnings during his employment.

On November 17, 2005, the claimant was involved in an accident. He continued to work with the employer's knowledge of the accident into July 2006. On July 13, 2006, a warrant was issued for the claimant's arrest for Reckless Homicide and other charges unknown to the claimant or his attorney at the time. The claimant contacted the employer with the information. He told the employer he was turning himself in to the authorities that day. The employer suspended the claimant's employment.

On July 20, 2006, the claimant appeared in court and received, for the first time, information regarding the charges that had been filed against him. Among them were drug-related charges. The claimant's attorney also learned of these charges on July 20, 2006. On July 21, 2006, the employer terminated the claimant for failure to inform the employer of the drug-related charges within three days of the arrest on July 13, 2006. The employer did not think the claimant was working under the influence of drugs and felt the claimant was a fine employee.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant was not discharged for misconduct and is eligible to receive unemployment insurance benefits.

Iowa Code section 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.

871 IAC 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.

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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of work-related misconduct at the hearing. The employer was not concerned about the claimant being under the influence of an illegal substance at work. In fact, the employer continued to allow the claimant to work for almost nine months after the accident. On July 12, 2006, the claimant informed the employer that he was being arrested but did not specify the charges, because he did not know the charges. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 22, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw