

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARTIN D OLSEN
Claimant

WALMART INC
Employer

APPEAL NO. 20A-UI-01818-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Martin Olsen filed a timely appeal from the February 18, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Olsen was discharged on January 27, 2020 for wanton carelessness in performing his work duties. After due notice was issued, a hearing was held on March 16, 2020. Mr. Olsen participated. The employer representative, Travis Lemmon, was not available at the telephone number the employer registered for the hearing and did not participate.

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: Martin Olsen was employed by Walmart, Inc. as a full-time Automotive Tech from 2008 until January 27, 2020, when the employer discharged him from the employment. During the couple years of the employment, Mr. Olsen worked at the employer's store in Ankeny. Mr. Olsen had spent nine years performing similar work at the Jordan Creek store before transferring to Ankeny. Assistant Manager Robert Gray was Mr. Olsen's supervisor at the Ankeny store. Mr. Olsen's duties included performing oil changes, changing, balancing and rotating tires, replacing batteries, tail lights and headlights, cleaning the shop, and receiving tire deliveries. Mr. Olsen's work hours were 8:00 a.m. to 5:00 p.m., Sunday through Thursday.

At the time of the discharge, the referenced Mr. Olsen's role in assisting with a tire rotation and balance on January 22, 2020 as the primary basis for the discharge. The customer received the tire rotation, but no wheel balance because the customer's oversized truck tires were too big to fit on the tire balancing machine. Mr. Olsen helped rotate the tires, but was otherwise in a secondary, quality control role. Mr. Olsen did not draft the work order and did not ring up the transaction. The coworker who did those things forgot to remove the wheel balance fee and the customer was charged \$48.00 for a wheel balance service the customer did not receive.

The employer also cited an oil change service incident on January 27, 2020 as a factor in the discharge. When Mr. Olsen was ready to commence the oil change, he discovered that the oil pan drain plug was stripped. Mr. Olsen could not perform the oil change and “declined” the oil change so the cashier could notify the customer, pursuant to the established protocol for communicating with customers. The employer faulted Mr. Olsen for not paging the customer and communicating directly with the customer.

The employer also cited a purported service incident from December 11, 2019 as a factor in the discharge. A customer returned to the Walmart store to complain that he was supposed to receive new tire valves, but asserted he had not received no tire valves. Mr. Olsen does not remember the car in question or the service incident.

Toward the end of Mr. Olsen’s employment, he was actively seeking to transfer to a different Walmart store due to his dissatisfaction with the work environment at the Ankeny store. However, the coaching from December 2019 prevented Mr. Olsen from transferring without the approval of the Ankeny management, which declined to authorize a transfer.

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 871 IAC 24.32(4).

The evidence in the record establishes a discharge for disqualifying reason. The employer did not participate in the appeal hearing and presented no evidence to prove a discharge based on misconduct in connection with the employment. The employer presented no evidence to rebut Mr. Olsen's testimony concerning his handling of the January 27, 2020 oil change incident pursuant to the established protocol and his ancillary role in the January 22, 2020, wherein the customer was charged for a wheel balance that could not be performed with the employer's equipment. The evidence fails to establish carelessness, negligence, or intentional and substantial disregard of the employer's interests. Accordingly, Mr. Olsen is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The February 18, 2020, reference 01, decision is reversed. The claimant was discharged on January 27, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

March 27, 2020
Decision Dated and Mailed