

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M HOLT

Claimant

APPEAL NO. 11A-UI-03658-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01/30/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 15, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 15, 2011. Claimant participated. Dan Cosner, Store Manager, represented the employer.

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: Diane Holt was employed by Wal-Mart for seven years. During the last two years of the employment, Ms. Holt worked as the full-time Vision Center manager at the employer's Davenport store. On January 29, 2011, the employer discharged her from the employment. Ms. Holt's immediate supervisor was Mark Schneweis, Health and Wellness Market Manager. On January 27, 2011, Mr. Schneweis and Store Manager Dan Cosner met with Ms. Holt to discuss multiple concerns about her performance, some of which had come to their attention through complaints lodged by two employees under Ms. Holt's supervision. The complaints had come to the employer via the employer's "open-door" policy. Ms. Holt had received training regarding her access to superiors via the open-door policy when she had been an associate, but had not received any training regarding her responsibilities as a supervisor under that policy. The complaints centered on scheduling issues and concerns that a third employee was not pulling her weight. As part of the meeting and disciplinary action, the employer imposed a decision-making day, the final disciplinary action the employer would ordinarily impose before discharging an employee.

Immediately after the meeting, Ms. Holt returned to the Vision Center and attempted in good faith to positively address the staff to resolve the concerns the employer had just discussed with Ms. Holt. Ms. Holt encountered the Vision Center subordinate about whom the others had complained. That employee could see that Ms. Holt was upset and asked the reason. Ms. Holt told the employee that Ms. Holt was apparently not doing a very good job as manager and that the employee was not being sufficiently productive. The employer soon learned of this

additional conversation that Ms. Holt had had with the employees under her supervision. When Ms. Holt returned on January 29, 2011 after the decision-making on January 28, 2011, the employer issued an additional reprimand for breach of confidentiality and discharged Ms. Holt from the employment. While the employer had made some reference to keeping the conversation confidential during the January 27, 2011 meeting, Ms. Holt had been too upset by the process to retain that detail. Ms. Holt's contact with the staff after the meeting was in no way motivated by retaliation, but was instead intended as a step toward resolving the issues in her department.

In making the decision to discharge Ms. Holt from the employment, the employer considered prior reprimands. In April 2010, the employer found expired trial contact lenses in the Vision Center. Ms. Holt had been under the belief that the contact lens vendor was responsible for gleaning expired stock.

REASONING AND CONCLUSIONS OF LAW:

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 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). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence fails to establish that Ms. Holt’s actions on January 27, 2011, were in any manner motivated by a willful or wanton disregard of the employer’s interests. Instead, her actions were motivated by her desire to comply with the employer’s expectations and resolve, in good faith, the issues in her department. Ms. Holt was clearly upset at the time of the January 27, 2011 reprimand. Her unintentional violation of the open-door policy did not constitute misconduct. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Holt was discharged for no disqualifying reason. Accordingly, Ms. Holt is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Holt.

DECISION:

The Agency representative’s March 15, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css