

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL D HULS

Claimant

APPEAL NO. 14A-UI-03382-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 02/23/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 18, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 21, 2014, by telephone conference call. The claimant participated personally. Employer participated by Mark Schneweiss, market health and wellness director. The evidence consists of the testimony of Mark Schneweiss and the testimony of Crystal Huls.

ISSUE:

Whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a retail chain. Among the services offered to the public are pharmacy services. The claimant worked at the store in Keokuk, Iowa. The claimant was hired in June 2006. Her last day of work was February 24, 2014. She was terminated on February 24, 2014. At the time of her termination, the claimant was the pharmacy manager.

The claimant became the pharmacy manager on April 30, 2013. In July 2013, the claimant hired a pharmacy technician named Brittany Jarret. Ms. Jarret had a national license but not an Iowa license. The employer believes that Iowa law requires that all licenses be posted in the pharmacy department. The claimant was responsible for making sure that all individuals who worked in the pharmacy department were licensed and able to practice in the state of Iowa.

The claimant knew that she had to follow up on Ms. Jarret's licensure, but Ms. Jarret rarely worked at all for the employer. On November 27, 2013, the claimant went into early labor and started her maternity leave. Before she left, she told another employee, Sarah, the problem with Ms. Jarret's license. Mark Schneweiss, the director of market health and wellness, found out about the licensing problem in early December 2013. The claimant returned from maternity

leave on January 25, 2014. She was allowed to keep working. The employer finally held a meeting with the claimant on February 14, 2014. This was the first time she knew that she was being investigated for the failure to get Ms. Jarret's license. The claimant was not terminated until February 24, 2014. She was terminated because she knowingly allowed Ms. Jarret to work without a state license.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there is a deliberate act or omission that constitutes a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer

The claimant is eligible for unemployment insurance benefits. The claimant was terminated because the employer believed she had knowingly allowed a technician named Brittany to work without having a state license. The employer knew about Brittany in early December 2013, and in fact suspended her. The claimant was off on maternity leave until January 25, 2014. She

was allowed to return to work. She had no knowledge that any investigation was ongoing concerning her failure to monitor Brittany's license. It was not until February 14, 2014, that the employer finally told her that her job was in jeopardy. Even so, the employer still waited until February 24, 2014, to terminate the claimant.

The evidence clearly shows that the claimant was not discharged for a current act of misconduct. The employer knew about Brittany's failure to have a license in early December 2013. Yet the employer waited until February 14, 2014, to even let the claimant know she was under investigation. The most reasonable inference from the evidence is that the claimant was not discharged for a current act of misconduct. The length of time between when the employer knew about the situation with the license and when the claimant was terminated is simply too great, even when taking into account the claimant's maternity leave. Because the claimant was not discharged for a current act of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 18, 2014, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs