

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AHMED M ALY
Claimant

APPEAL NO: 14A-UI-12256-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/02/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 20, 2014 determination (reference 01) that qualified the claimant to receive benefits and held the employer's account chargeable because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the December 16 hearing. Alison Welchan, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2011. He worked as a full-time hardline associate. Prior to October 31, 2014, the claimant's job was not in jeopardy.

On October 31, three employees reported that the claimant had the word "ISIS" written on the back of his safety vest. One employee reported that the claimant told her he had been in his country's army before he moved to the United States. The employee understood the claimant had shot off three people's heads.

Welchan informed the corporate office about the three employees' reports. The corporate office determined the word "ISIS" amounted to an indirect threat and violated the employer's no violence in the work place policy.

On November 2 when the employer discharged the claimant, he denied he had written the word "ISIS" on his vest. Instead, he had put the first letters of his name in Arabic. When employees did not understand the Arabic symbols for his name, the claimant changed/alterd the symbols so employees would not question him about the word "ISIS". While the claimant had been in the army in Egypt, he did not shoot anyone. The claimant saw other soldiers shoot people.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While I understand the employer's concerns, the claimant's explanation as what he had initially written on his safety vest was not disputed by the facts presented at the hearing. The claimant's testimony about what he told an employee is credible and must be given more weight than the employer's reliance on hearsay information from an employee who did not testify at the hearing. The claimant became aware employees did not understand that he wrote his initials in Arabic and misunderstood what he wrote on his safety vest. The evidence does not establish that the claimant threatened or even directly threatened anyone by putting his initials in Arabic on his safety vest. The claimant did not commit work-connected misconduct. As of November 2, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's November 20, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 2, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css