

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUROUSH R ALEHY
Claimant

WALMART INC
Employer

APPEAL 20A-UI-14375-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 19, 2020, (reference 03) unemployment insurance decision that denied benefits based upon his discharge for dishonesty. The parties were properly notified of the hearing. A telephone hearing was held on January 8, 2020. The claimant participated. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an asset protection associate from the summer of 2019, until this employment ended on July 26, 2020, when he was terminated.

Claimant was employed as the only asset protection associate at employer's store. He did not wear a uniform and walked around the store to observe customers to ensure there was no theft occurring. Claimant not allowed to take breaks in employer's break room due to a prohibition on socializing with other employees in case he ever needed to investigate one of them. Claimant was allowed to eat his lunch and take breaks in his office or his vehicle.

Claimant was frequently interrupted during his breaks by police officers who would come to his office and ask to watch security footage for shoplifting charges. Claimant understood the police officers were busy, so even if he was on break he would assist the officers. To make up for the time that was taken away from his breaks, claimant would add the time back to his lunch hour. He would clock in after his 30 minute lunch break, but rather than going back out on the floor to work, he would remain in his office while not working to gain back the lost break time.

Claimant was notified by employer that it investigated him for falsifying his time records. Employer terminated claimant for violating its payroll integrity policy. Claimant was aware of the policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to

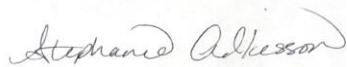
whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

The falsification of time records constitutes misconduct because claimant knew that his breaks were to last 15 or 30 minutes and that he was supposed to work while clocked in. Claimant did not raise the issue of having his breaks interrupted with management. These acts of dishonesty on the part of the claimant rises to misconduct as employer has a right to expect honesty, if not absolute adherence to its rules without a warning. The administrative law judge holds that claimant was discharged for an act of misconduct, and as such is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The October 19, 2020, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Stephanie Adkisson
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January 28, 2021
Decision Dated and Mailed

sa/mh