IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIFFANY A JOHNSON
Claimant

WAL-MART STORES INC
Employer

APPEAL NO: 08A-UI-01490-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/13/08 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tiffany A. Johnson (employer) appealed a representative's February 4, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on February 27, 2008. The claimant participated in the hearing. Brian Bodensteiner appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 8, 2005. She worked part time as a sales associate in the employer's tire and lube service center at its Cedar Rapids, Iowa store. Her last day of work was January 15, 2008. The employer discharged her on that date. The stated reason for the discharge was driving a customer's vehicle to pull it into the shop knowing that she was not allowed to do so.

About a month prior to January 15 the claimant had a discussion with Mr. Bodensteiner, the assistant manager of the service center, in which she reminded him that she did not have a current valid driver's license, and he confirmed to her that this meant that under the employer's policies and for liability reasons the claimant was prohibited from driving customer's cars even in order to pull them into the shop. On January 15 the supervisor on duty had initially asked the claimant to pull in a vehicle and she had initially demurred; however, later that day, although not asked again, she did enter a customer's vehicle and drove it into the shop. Unfortunately, in doing so she hit something with the vehicle causing damage to the vehicle. As a result, Mr. Bodensteiner learned the claimant had driven the customer's vehicle without a valid driver's license contrary to his prior discussion with her, and the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
   a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
   b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
   a. Manifest equal culpability, wrongful intent or evil design; or
   b. Show an intentional and substantial disregard of:

1. The employer's interest, or
2. The employee's duties and obligations to the employer.

Henry, supra.

The claimant's driving the customer's vehicle after being specifically told only about a month before that she was prohibited from doing so shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 4, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 15, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs