

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA HARRIS

Claimant

APPEAL NO. 06A-UI-09686-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 08-20-06 R: 03
Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 22, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 17, 2006. The claimant participated in the hearing. David Less, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cashier for Wal-Mart from October 5, 2002 to April 11, 2006. She suffered a heart attack at work January 9, 2006, and was hospitalized until January 17, 2006, at which time she requested a leave of absence from the employer. On March 6, 2006, the employer sent the claimant a letter stating it had not received any medical documentation from her and if she did not provide such documentation, the employer would consider her to have voluntarily quit her position. The claimant spoke to a personnel employee and asked her physician to fax the documentation to the employer at the fax number provided by the personnel department, and the claimant believed her doctor had done so. The employer did not receive any documentation and on April 11, 2006, it sent her a letter stating her employment was terminated. The claimant obtained a full medical release July 25, 2006. She did not return to the employer and offer her services, because she had been discharged in April 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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 claimant began a medical leave of absence January 9, 2006. The employer sent her a letter March 6, 2006, nearly two months later, stating it had not received any medical documentation for her leave of absence and it would consider her to have voluntarily left her job if it did not receive the documentation by April 11, 2006. The claimant spoke to the personnel department after getting the letter and then contacted her doctor's office and asked it to fax the documentation to the employer. She assumed it did so because she did not hear anything else until she received the April 11, 2006, letter stating her employment was terminated. The claimant did not contact the employer at that time, because she understood they needed cashiers and she did not secure a full release to return to work until July 25, 2006. While the employer's position is understandable, the claimant was off work due to a medical condition and her separation was not due to misconduct. Because she was off work due to a serious medical condition, notified the employer of her condition at the time of occurrence and was released to return to work, the administrative law judge concludes the claimant is eligible for benefits and was not required to

return to the employer to offer her services because her employment had been terminated at that point. Benefits are allowed.

DECISION:

The September 22, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw