

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH V POLZ
Claimant

APPEAL NO. 09A-UI-14880-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 08/30/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated September 22, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on November 3, 2009. The claimant participated personally. The employer participated by Ms. Christine Jarmon, assistant manager.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Joseph Polz was employed by Wal-Mart Stores, Inc. from May 5, 2002, until August 21, 2009, when he was discharged from employment. Mr. Polz last held the position of full-time greeter in the company's automotive department and was paid by the hour.

The claimant was discharged based upon an event that had taken place in the automotive department. An employee in the department had mistakenly refilled a customer's vehicle with oil in the automatic transmission, causing the potential for damage to the vehicle. Mr. Polz, who was present and had noted the mistake, instructed the worker and others to immediately report the incident by entering it into the company's computer logs. The claimant was not aware that the employees had not elected to follow his directives. All employees who were aware of the mistake received a warning. A decision was made to terminate Mr. Polz because he had received three previous "counselings" from the employer. The previous warnings the claimant had received were not related to events similar to the one that caused his discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the evidence in the record does not support a finding that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

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 evidence in the record establishes that Mr. Polz was present the day that the employee made an error by filling an automatic transmission with oil. The evidence also establishes, however, that the claimant took action to alleviate the situation by instructing the employees to immediately report the matter through the company's computer system. Mr. Polz believed that the employees had followed his instructions in this matter. The claimant had no further part in this matter and the decision to terminate him was based solely upon the fact that the claimant had had three previous warnings for matters that were not similar to the incident that caused his discharge.

Based upon the evidence in the record, the administrative law judge finds that there is insufficient evidence to establish that the claimant acted willfully or deliberately in disregard of the employer's interests or standards of behavior. Although Mr. Polz did not make the error, he acted reasonably in instructing employees to take remedial action and was not aware that the remedial action had not been taken. Benefits are allowed.

DECISION:

The representative's decision dated September 22, 2009, reference 01, is affirmed. The claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw