

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE R KUTA
Claimant

APPEAL NO: 18A-UI-09700-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 08/26/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Lynne R. Kuta, the claimant filed a timely appeal from a representative's unemployment insurance decision dated September 19, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on August 25, 2018 for failing to perform satisfactory work, although the claimant was capable of doing so. After due notice was provided, an in-person hearing was held in Council Bluffs, Iowa on October 5, 2018. Claimant participated. Employer participated by Ms. Lisa Anglen, Personal Training Coordinator and Mr. Kamar Henery, General Manager.

ISSUE:

The issue is whether the claimant was discharged for intentional work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Lynne R. Kuta was employed by Walmart, Inc. from September 23, 2006 until August 25, 2018 when she was discharged from employment. Ms. Kuta last held the position of full-time people greeter and was paid by the hour. Her immediate supervisor was David Janoipen.

Ms. Kuta was discharged on August 25, 2018 for an incident that had taken place the proceeding day. On August 24, 2018, a store patron had returned to the Walmart facility and at that time stated that he had left the store with bottles of liquor that had not been paid for. It appears that the patron then purchased the merchandise. At the time of the incident, the claimant, Ms. Kuta was the people greeter who was assigned to the doorway area. The company investigated whether Ms. Kuta had been properly checking patrons leaving the store.

A review of company security tape of the incident showed Ms. Kuta in a sitting position as she looked over the receipt that had been presented to her by the patron, and shows Ms. Kuta marking the receipt. After reviewing the security tape, company management concluded that Ms. Kuta was not performing her job properly because she was sitting instead of standing when she checked the merchandise and she had not properly noted that the two bottles of liquor had

not been paid for. People Greeters are trained that in addition to greeting patrons as they arrive, they are to check each patron's purchase receipts against the items that the patron have as they leave the store. The greeters are to note the date on the sales slip, whether the purchase was made at the store where the greeter is employer and to verify that all high dollar items, such as liquor, are paid for. If a greeter becomes too busy to properly check leaving patrons, they are expected to notify management and request other assistance. Individuals who attempted to leave with merchandise that has not been paid for are to be stopped and sent back to pay. If an employee has a doctor's note authorizing them to sit, the employer's expectation is that the greeter will stand as he or she checks patrons and their receipts.

Ms. Kuta had warnings for failure about work store exits on February 16 and February 17, 2018. Ms. Kuta was warned on March 3, 2018 for failure to properly check receipts, and warned at that time that further performance issues could result in her termination from employment.

Ms. Kuta attempted to perform her work to the best of her ability. She had been authorized by a doctor's statement to alternate sitting and standing on the job on one hour intervals. The employer was aware of her medical limitations. The claimant believes she was distracted from performing her duties as a greeter because she was required to perform other duties. Ms. Kuta believed that the company required her to perform these other duties to get her to quit employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for intentional disqualifying misconduct in connection with her work or whether the claimant's negligence or carelessness is of such a degree to manifest equal culpability. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof the discharge was as qualifying under the provisions of Iowa Code § 96.6(2). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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.

In the case at hand, the administrative law judge carefully listened to the testimony, questioned the witnesses, considered their answers, and observed the demeanor of the witnesses. After a careful review of this matter, the administrative law judge concludes that Ms. Kuta did not intentionally mis-perform or under-perform her duties. The claimant's poor work performance was due to inability and carelessness by the claimant. The claimant's substandard performance was not motivated by bad intent and willfulness not on the part of the claimant. Although the employer provided training, re-training and warnings to her, Ms. Kuta was not able to function at the level of competence that the employer expected. The claimant was distracted by the many duties required of a greeter and failed to understand the level of importance that the company had placed upon the greeter carefully checking the merchandise in the possession of a patron against several criteria on the receipt that are important to the employer.

The claimant had been transferred into the people greeter work classification when her original job had ended and although the employer had repeatedly given assistance and warnings, the claimant was not able to perform the level of competence expected by the employer through no fault of her own.

The question before the administrative law judge is not whether this employer had a right to discharge this claimant for these reasons, but whether the claimant's discharge took place under disqualifying conditions within the meaning of the Iowa Employment Security Act. While

the management decision to terminate Ms. Kuta may have been a sound decision from a management viewpoint, claimant's unsatisfactory work performance was not due to intentional misconduct but due to inability.

Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements.

DECISION:

The representative's unemployment insurance decision dated September 19, 2018, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn