

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NANCY A BOSMA
Claimant

WAL-MART STORES INC
Employer

APPEAL 16A-UI-09612-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/31/16
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the August 25, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2016. Claimant participated. Employer participated through Moses McBride, Store Manager. Employer's exhibit one was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a service desk associate beginning on February 29, 2000 through July 12, 2016 when she was discharged. When customers come to the courtesy counter to cash their payroll checks, the claimant was obligated to insure that they had endorsed or signed their name on the back of the check before cashing it. The claimant cashed approximately thirty checks per day and had demonstrated her ability to properly check the back of the check for a signature prior to cashing it.

The claimant had received three prior warnings for failure to make sure checks were properly endorsed before cashing them. Under the employer's policy, a copy of which had been made available to the claimant, the claimant was told that her next incident of failing to insure checks were properly endorsed would lead to her discharge.

On July 9, 2016 the claimant cashed a payroll check for a customer that was not properly endorsed. She made the error because the courtesy counter was busy, the phone was ringing and one of her coworkers was having a low blood sugar incident. The employer admits that the claimant did not intentionally violate the policy; she simply was distracted and made a mistake. Her last warning for similar conduct was on September 7, 2015, some ten months prior to the last incident.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." **When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature.** *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation.

The employer agrees that the claimant had no intent to violate the policy. She was merely distracted by an unusual set of circumstances, including a coworker suffering from a medical problem. Despite the fact that claimant had been previously warned for similar conduct, the administrative law judge cannot conclude that this incident was intentional misconduct on the part of the claimant. Thus, no disqualification is imposed and benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 25, 2016, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs