

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER M HUFFMAN**  
Claimant

**APPEAL NO. 13A-UI-01807-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/13/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated February 8, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 13, 2013. Claimant participated. The employer participated by Mr. John Slauson, Assistant Store Manager.

**ISSUE:**

The issue in this matter is whether the evidence in the record establishes 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: Amber Huffman was employed by Wal-Mart Stores from August 29, 2009 until January 16, 2013 when she was discharged from employment. Ms. Huffman last worked as a full-time department manager in the children and infant apparel department and was paid by the hour. Her immediate supervisor was Tami Block.

A decision was made to terminate Ms. Huffman after approximately 79 cans of outdated infant formula were discovered for sale in her department. It was the employer's belief that Ms. Huffman had been instructed to check the infant formula on a Tuesday or Wednesday of each week to ensure that no outdated formula was for sale to the public. Ms. Huffman had received two previous warnings from the company regarding performing price changes late and the claimant had been warned that further violations of a similar nature could result in the claimant's termination from employment.

Ms. Huffman had not been instructed by her supervisor to check the infant formula on a weekly basis for outdated product. The claimant had been instructed by her supervisor to do the outdated inventory check once per month. Ms. Huffman was in the process of performing her monthly inventory of the product when she became ill and missed work for the remainder of the week ending January 19. The claimant had been specifically instructed by her supervisor to inventory the infant formula and to complete her inventory by Friday, January 18, 2013.

Ms. Huffman was unable to complete her inventory before being absent due to illness. While the claimant was absent another individual did the inventory and found the outdated formula in the claimant's absence. Although Ms. Huffman argued that she had been sick and unable to complete her duties, a decision was nonetheless made to terminate Ms. Huffman from her employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does not.

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 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial."

When based upon 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 1988).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). While past acts and warnings can be used to determine the magnitude of a current act of misconduct a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In this matter the employer made a management decision to terminate Ms. Huffman based upon the employer's conclusion that the claimant had not been following a directive to do a weekly inventory for outdated product. Ms. Huffman testified under oath that she had been specifically instructed to check the inventory for outdated product once per month and that she had been given specifically until Friday, January 18, 2013 to complete the monthly inventory for January 2013. The claimant was unable to complete the inventory because she became ill and was unable to report for work for approximately four days. During the interim the material of outdated infant formula was found and a decision was made to terminate the claimant from employment.

While hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony providing the testimony is not inherently improbable. The administrative law judge finds the claimant to be a credible witness and concludes that the claimant did not have sufficient time to complete her task due to illness.

The administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct at the time of separation. The claimant was attempting to follow the work directives given to her by her immediate supervisor but was unable to complete her task due to illness. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

#### **DECISION:**

The representative's decision dated February 8, 2013, reference 01, is reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css