

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**REBECCA R FANN**

Claimant

**APPEAL 17A-UI-00440-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 12/04/16**

**Claimant: Appellant (1R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 5, 2017 (reference 02) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2017. The claimant, Rebecca R. Fann, participated personally. The employer, Wal-Mart Stores Inc., participated through witnesses Jacob Murphy and Kelzye Bedwell.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cashier. Claimant was employed from March 21, 2015 until December 5, 2016 when she was discharged from employment. Claimant's job duties involved assisting customers with check-out and ensuring proper receipt of payments from customers.

This employer has a progressive disciplinary policy. Once an employee receives four written warnings they are subject to discharge from employment. Claimant was aware of this policy. Claimant had received two written warnings for attendance. This employer also had a policy that cashiers must ensure accurate receipt of payments from customers.

On February 8, 2016 claimant received a third written warning for improper use of the cash register and being short over \$100.00. This incident stemmed from a situation where claimant pushed the cash button instead of the electronic benefit transfer ("EBT") button on the cash register. She entered the transaction as a cash transaction when it was actually an EBT transaction. This meant that no cash was collected and the customer's EBT card was not charged. Claimant allowed the customer to leave the store without paying for the merchandise. The written warning claimant received regarding this matter advised her that another violation would result in discharge from employment.

The final incident occurred on November 25, 2016. Claimant again entered an EBT transaction as cash. When she did this her cash drawer opened and she closed it without accepting cash for the transaction. The customer was still in the store when claimant realized her mistake. She did not ask the customer to wait for a manager or call this matter to a manager's attention. She allowed the customer to leave the store without paying for over \$100.00 worth of merchandise. This matter did not come to the employer's attention until several days later when Mr. Murphy investigated why the claimant's cash drawer was short. It was never reported to management by the claimant. Claimant was called into the office on her next shift and was discharged by Mr. Murphy for this final incident.

The administrative record shows that the claimant has not requalified for benefits since this separation but reflects she appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period. The issue of whether the claimant is otherwise eligible for benefits based on other wage credits, and if so then for a recalculation of any benefits that may still be due based on such credits should be remanded to the Benefits Bureau for an initial investigation and determination.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. However, claimant may be otherwise eligible for benefits based on other wage credits.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that Mr. Murphy's testimony is more credible than claimant's testimony.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, 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). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was

notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Prior to discharge claimant had received a previous written warning for the exact same type of behavior which occurred on November 25, 2016. Claimant's job duties included following the policies and procedures put in place for accurate transactions. Claimant was aware of these policies and procedures. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts which constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, the separation is disqualifying. However, claimant may be otherwise eligible for benefits based on other wage credits.

Workers who are disqualified from part-time work based on the nature of the separation may still be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other employers to be monetarily eligible and provided they are otherwise eligible. *Irving v. EAB*, 883 N.W.2d 179 (Iowa 2016). Wage credits accrued during this employment shall not be considered in determining benefits for the claimant until the claimant has worked in and been paid for insured work equal to ten times her weekly benefit amount.

Inasmuch as claimant was discharged for misconduct, the separation is disqualifying. However, while the claimant has not requalified for benefits since the separation she appears to be otherwise monetarily eligible according to other base period wages. Thus, she may be eligible for benefits based upon those other wages.

**DECISION:**

The January 5, 2017 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. However, claimant appears to be otherwise monetarily eligible. The account of this part-time employer (168629-000) shall not be charged.

**REMAND:** The issue of whether the claimant is otherwise eligible for benefits based on other wage credits, and if so then for a recalculation of any benefits that may still be due based on such credits is remanded to the Benefits Bureau for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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