

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY M CLARK**  
Claimant

**APPEAL NO: 14A-UI-03028-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 02/23/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 13, 2014, reference 01, that held he was discharged for misconduct on February 20, 2014, and benefits are denied. A telephone hearing was held on April 10, 2014. The claimant participated. Matthew Lauver, Asset Manager, and Sarah Dickerson, Personnel Representative/Training Coordinator, participated for the employer.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 8, 2012, and last worked for the employer as a full-time tire technician on February 20, 2014. The employer has a progressive disciplinary policy. The employer issued claimant steps one and two coaching disciplines.

The employer issued claimant a step three discipline on March 2, 2013 for leaving work without completing a customer job. It warned claimant a further incident would result in employment termination.

Claimant was not scheduled to work on February 19, 2014. He clocked in at 6:48 a.m. and clocked-out at 9:20 a.m. He did an over-ride of the clock-in system, and he knew he did not have manager permission to do so. A security video showed he performed no productive work while in the compressor room. Claimant admits these facts.

The employer terminated claimant on February 20, 2014 for his conduct on February 19 in light of the three-step disciplinary process.

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

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 administrative law judge concludes employer established claimant was discharged for misconduct on February 20, 2014 for progressive discipline.

Claimant admits he clocked-in on a non-scheduled work day without manager permission and performed no meaningful work. Claimant's conduct is contrary to employer policy and it violates a standard of behavior the employer has a right to expect. This incident constitutes job disqualifying misconduct in light of the progressive step discipline.

**DECISION:**

The department decision dated March 13, 2014, reference 01, is affirmed. The claimant was discharged for misconduct on February 20, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs