

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SABRINA K CROOK
Claimant

WALMART INC
Employer

APPEAL 18A-UI-09602-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Sabrina Crook, Claimant, filed an appeal from the September 11, 2018, (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Walmart, Inc. for leaving work without the employer's permission. The parties were properly notified of the hearing. A telephone hearing was held on October 2, 2018 at 11:00 a.m. Claimant participated. Employer participated through Darren Shannon, Assistant Manager. No exhibits were admitted.

ISSUE:

Whether Claimant's separation was a discharge for disqualifying job-related 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 C.A.P. Team I Associate from March 24, 2017 until her employment ended on August 21, 2018. (Shannon Testimony) Darren Shannon was claimant's direct supervisor. (Shannon Testimony)

On August 21, 2018, a supervisor from another team rolled a cart towards claimant's area and told claimant that it was more work for her to do. (Claimant Testimony) Claimant interpreted the comment as sarcastic and took offense. (Claimant Testimony) Claimant complained of the incident to her supervisor. (Claimant Testimony) Claimant was frustrated and agitated, so employer told claimant to take a 15-minute break to calm down while he investigated the matter. (Claimant Testimony; Shannon Testimony) When employer looked for claimant 15 minutes later, claimant could not be found. (Shannon Testimony) Another employee reported that claimant clocked out, left work and was not coming back. (Shannon Testimony)

Employer called claimant approximately 30 minutes after claimant left work, but claimant did not answer. (Shannon Testimony) While investigating the incident that occurred earlier in the day, employer received reports of prior incidents with claimant that had not previously been brought to employer's attention. (Shannon Testimony)

An hour to an hour and 15 minutes after claimant left work, claimant called employer. (Shannon Testimony; Claimant Testimony) Claimant's first question to employer was whether she still had a job. (Shannon Testimony; Claimant Testimony) Employer told claimant that it needed to investigate further. (Shannon Testimony) After speaking with supervisors and witnesses to prior incidents, employer determined claimant was a "toxic associate" and that her employment should be terminated. (Shannon Testimony) Employer called claimant later that evening and told claimant that she did not need to report to work the next day and that employer was terminating her employment. (Shannon Testimony) The reason given for termination was job abandonment. (Shannon Testimony)

Employer has a points-based attendance policy. (Shannon Testimony) The policy does not clearly state what discipline should be assessed for one instance of leaving work without notice or permission. (Shannon Testimony) Claimant had not received prior warnings regarding attendance, tardiness or leaving work early. (Shannon Testimony) Claimant had no prior disciplinary action for misconduct. (Shannon Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit; claimant was discharged for non-disqualifying misconduct. Benefits are allowed if claimant is otherwise eligible.

Iowa Code § 96.5(1) provides: "An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." Voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant was frustrated when she left work early on August 21, 2018; when claimant left, she was not certain if she was taking a 15-minute break or her hour-long lunch break or if she was leaving for the rest of the day. (Claimant Testimony) However, claimant did not intend to terminate her employment relationship with Walmart Inc. (Claimant Testimony) Employer points to claimant asking whether she still had her job as evidence of her intent to quit (Shannon Testimony); however, claimant would not have asked the question at all, if she intended to quit. Instead, claimant's question was an acknowledgment that her actions were wrong and she was uncertain if it was grounds for termination. Furthermore, employer did not truly believe claimant voluntarily quit or it would not have continued an investigation. Any prior acts of misconduct by claimant would have been moot, if she had voluntarily quit her employment. Claimant did not voluntarily quit; claimant was discharged for misconduct.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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.

Further, 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). 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).

An employee leaving work early without notice or permission is misconduct. However, in this instance, claimant’s misconduct of leaving work early without notice or permission is not substantial enough to be disqualifying. Claimant had no prior warnings for attendance, tardiness or leaving work without permission. The employee handbook is not clear on the consequences for one instance of leaving work without permission. Other employees have left work without permission and were not terminated. Furthermore, this instance was not the true basis for claimant’s termination. If it was, employer would have terminated claimant’s employment during its first telephone conversation on August 21, 2018. Employer did not discharge claimant during that telephone conversation, because it was conducting an investigation into any prior misconduct by claimant. Employer learned of a prior incident in July 2018, which did not result in disciplinary action. Employer also heard complaints about claimant’s attitude and that other employees did not like claimant. Employer may be correct in that claimant was a “toxic associate,” and employer’s decision to terminate claimant’s employment may be in employer’s best interest. However, none of the reasons provided by employer rise to the level of disqualifying, job-related misconduct; employer has not met its burden to prove. Benefits are allowed.

DECISION:

The September 11, 2018, (reference 01) unemployment insurance decision is reversed. Benefits are allowed if the claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs