

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN PRETZ
Claimant

APPEAL NO. 10A-UI-07516-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/24/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated May 6, 2010, reference 05, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on July 9, 2010. Claimant participated personally. The employer participated by Mr. Eric Olson, Assistant Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Allen Pretz was employed by Wal-Mart Stores, Inc. from June 23, 2009 until April 14, 2010 when he was discharged from employment. Mr. Pretz held the position of full-time overnight stocker and was paid by the hour. His immediate supervisor was Tyler Ball.

The claimant was discharged after the employer believed that Mr. Pretz had left work without authorization on the night of April 13, 2010. That night the claimant had indicated to his supervisor during a telephone conversation that the claimant was ill and desired to leave work early. Prior to the conclusion of the telephone conversation, the claimant's immediate supervisor hung up on the claimant. Mr. Pretz attempted to locate his supervisor before leaving but was not able to do so. Believing that he had provided notice to his supervisor of his intention to leave work and the reason for it, the claimant believed that he was authorized to leave.

Mr. Pretz reported to work the following work day, April 14, 2010 and was called to a meeting. The claimant denied walking off the job or leaving his employment the previous evening. Because the employer believed the claimant had not secured sufficient authorization to leave, he was discharged from employment.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant a discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this case the employer has relied upon hearsay evidence to establish that Mr. Pretz left work on the night of April 13, 2010 without sufficient authorization. In contrast, the claimant participated personally and provided sworn testimony. The claimant testified that he was not feeling well and specifically requested permission to leave work before the end of the shift and

that he believed sufficient authorization had been given when he provided notice to his supervisor and the supervisor did not deny his request. Although hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant's testimony to be credible and finds that the claimant's testimony is not inherently improbable.

The Iowa Supreme Court in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence did not constitute misconduct even in a case where the worker disregarded the employer's instructions to call the employer.

Based upon the facts of this case and the application of the law, the administrative law judge concludes the claimant was discharged for no disqualifying reason. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, based upon the facts of the case and the application of the law, misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 6, 2010, reference 05, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs