

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL BAKER
Claimant

APPEAL NO. 12A-UI-08437-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/10/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated July 2, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 5, 2012, in the Cedar Rapids workforce center. Claimant participated personally and represented herself. Employer participated by Jennifer Roberts Asset Protection Manager. Employer Exhibits A through C and Claimant Exhibits 1 and 2 were admitted into evidence. Witness Jay C. Bickford was subpoenaed and failed to show.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was a full-time grocery receiver. She began working for Wal-Mart on August 12, 2000. She was discharged on December 22, 2011 by employer for time theft.

In December 2011, Personnel Manager Michelle Kauten informed Asset Protection Manager Jennifer Roberts that the claimant was making several manual adjustments to her time card. Ms. Kauten immediately began investigating claimant's manual time adjustments. The investigation consisted of review video footage available compared to adjustments made to the claimant's time records. Ms. Roberts concluded that claimant was stealing time. She was fired without warning. The employer did not take claimant's statement prior to termination.

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.

871 IAC 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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The employer undoubtedly proved that the claimant manually adjusted her time reports. The claimant testified credibly that she had been asked by a previous supervisor to perform work "off the clock".¹ She was instructed to perform the work and adjust her time card accordingly. Consequently, misconduct has not been proven.

DECISION:

The fact-finding decision dated July 2, 2012, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs

¹ It is significant that claimant attempted to subpoena this former supervisor, who is still employed by the employer, but he did not appear as instructed by the subpoena.