

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA WOLF
Claimant

APPEAL NO: 16A-UI-02684-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/31/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 22, 2016 (reference 01) decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 28, 2016. The claimant participated in the hearing. Kim Cansler, Assistant Store Manager, and Jan Miller, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service manager for Wal-Mart from December 15, 2011 to January 16, 2016. She was discharged for authorizing the loading of four gift cards for a total of \$100.00 without consulting a salaried manager.

A customer went into the store January 15, 2016 and told a cashier he had talked to a manager the day before because the four \$25.00 Longhorn gift cards he received did not have money loaded onto them. The cashier called for a manager three times but when no manager arrived after 15 minutes the cashier called the claimant to the service desk. The customer told the claimant and cashier he had received the gift cards to Longhorn as a gift but when he tried to use one of them the night before he learned there was not any money loaded onto the card at the time of purchase. Because they were a gift he said he did not have a receipt. The customer stated he spoke to a manager the day before and was told Wal-Mart would correct the situation by loading the money on the cards. The employer's policy states that only a salaried manager can authorize gift cards of \$100.00 or more but the claimant had authorized numerous gift cards of a lower amount before and was not aware of the policy as it is not written with a specific amount an unsalaried manager may authorize. The claimant was not aware she had done anything wrong until the following day. The employer learned of the situation because the drawer was short \$100.00 which prompted an investigation. It reviewed video of that register and observed the claimant authorize the gift cards. The employer concluded the customer scammed it with the gift card story.

The claimant had received three written warnings for attendance but had not exceeded the allowed number of attendance points as of the time of the separation. Under the employer's progressive disciplinary policy, a fourth written warning results in discharge. Consequently, the employer called the claimant to the office January 16, 2016 and terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was not aware she was violating the employer's policy when she loaded the four gift cards for the customer. The cashier told the claimant she had called for a manager three times without success and the customer had been waiting 15 minutes. The claimant listened to the customer's account of the situation as well as what the cashier told her and made the decision to load the gift cards for the customer, as she had done several times before for other customers purchasing gift cards. The claimant did not know that a transaction of that nature of \$100.00 or more required a salaried manager's approval, and the employer could not point to a specific rule or when the claimant would have been instructed regarding that policy. At worst, this was an isolated incident of poor judgment; which does not rise to the level of disqualifying job misconduct. Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 22, 2016 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can