

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD A HUSS**

Claimant

**APPEAL NO. 10A-UI-01113-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**Original Claim: 12/06/09  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated January 5, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on February 17, 2010, in conjunction with Appeal No. 10A-UI-01112-NT. The claimant participated personally. Participating as a witness was Cynthia Huss, the claimant's wife. The employer participated by Elizabeth Graeser, facility manager. Employer's Exhibits A and B were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Ronald Huss was employed by Wal-Mart Stores from April 16, 2008, until December 8, 2009, when he was discharged from employment. Mr. Huss held the position of full-time sales associate and was paid by the hour.

The claimant was discharged when the employer reasonably concluded that Mr. Huss had violated the company's workplace violence policy by making a veiled threat of violence to another worker in a company break room area. The worker and other associates who were present felt intimidated and complained. Mr. Huss and his wife, who also was employed by Wal-Mart, had been involved in a dispute with another Wal-Mart employee about a quilt that was to have been ordered, assembled, and paid for outside of Wal-Mart. The employees' dispute about the quilt, however, had escalated and had begun effecting employees while on the job. The company investigated and determined that Mr. Huss had confronted the other worker, indicating that the other worker would have to "deal with" Mr. Huss if the other worker's "shit and lies" did not stop.

The employer reasonably considered the claimant's statement to be a violation of its workplace violence policy, which prohibits not only threats of violence but also veiled threats of harm (See Exhibit A). When the matter was investigated, Mr. Huss fully admitted to confronting the other worker about making "false statements" in the presence of other employees in the break room.

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

The question is whether the evidence in the record establishes that Ronald Huss was discharged for misconduct in connection with his employment. It does.

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 discharge cases. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the 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, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Threats of violence or veiled threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

The evidence in the record shows that Mr. Huss was aware of the policy and was aware that violation of it could result in termination from employment. The claimant nevertheless confronted another worker on Wal-Mart premises and made what is reasonably concluded to be a veiled threat of violence. The claimant's conduct was contrary to the interests and standards of behavior that the employer had a right to expect of its employees and was thus disqualifying under the provisions of the Iowa Employment Security Law. Benefits are denied.

Mr. Huss has received unemployment benefits since filing a claim with an effective date of December 6, 2009.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated January 5, 2010, reference 01, is reversed. Ronald Huss is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise. The issue of whether the claimant must repay the unemployment benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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