

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

T J RICE
Claimant

WAL-MART STORES INC
Employer

APPEAL 14A-UI-13368-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/30/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 15, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 21, 2015. Claimant participated. Employer participated through Kayly Cansler, Assistant Manager.

ISSUE:

Was the claimant discharged due to job connected 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 tire and lube express shop manager beginning on July 15, 2008 through December 2, 2014 when she was discharged. The claimant was discharged for reaching the end of the employer's disciplinary policy. Despite the claimant's denial to the contrary she had been told previously by at least two different individuals that she was not to keep her purse anywhere but in the locker provided for her by the employer. On November 27, 2014 the claimant was specifically told that she was to keep her purse in the locker and she was given the combination to the lock on that locker. The employer's written policy provides that associates are to keep personal property in lockers or other designated areas. The claimant admits that she had been told just the day before that she was to keep her purse in the locker. The asset protection manager as well as the personnel manager had both spoken to the claimant on previous occasions telling her that her purse needed to be kept in her locker. The employer has no cameras in the changing room thus they are not able to protect the assets of employees who leave their personal property unsecured. It is reasonable for an employer to require employees to keep their purses locked inside a locker.

The very next day after being told not to keep her purse in the changing room and after the employer had insured that the claimant had a locker and a combination to secure the locker, the claimant left her purse in the changing room. The claimant was discharged for reaching the final step in the progressive disciplinary policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

It is not unreasonable for the employer to require that employees keep their personal belongings in lockers while at work. The employer even supplied the lock and the locker. The administrative law judge finds the employer testimony more credible that the claimant had been told more than once she was not allowed to keep her purse in her work area. Even the claimant admits that the day before she was specifically told not to keep her purse in her work area but to use her locker. She did not. Forgetting just one day after being specifically told to keep her purse in her locker is not believable. Claimant's repeated failure to follow the instructions after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The December 15, 2014 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs