

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER M HANNAH
Claimant

APPEAL NO: 17A-UI-06676-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/11/17
Claimant: Appellant (2R)

Iowa Code § 96.5(2)A – Discharge

STATEMENT OF THE CASE:

Christopher Hannah, the claimant, filed a timely appeal from a representative's decision dated June 27, 2017, (reference 01), that denied unemployment insurance benefits. After due notice was provided, a telephone conference hearing was held on July 19, 2017. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Christopher Hannah was employed by Wal-Mart Stores, Inc. from July 5, 2016 until June 9, 2017 when he was discharged from employment. The claimant was most recently employed as a General Laborer in the company's loading department and was paid by the hour. Mr. Hannah was employed full-time working 3:30 p.m. until 1:00 a.m., Tuesday through Friday. His immediate supervisor was Ms. Lora Wolf.

Mr. Hannah was discharged when he reported to work on June 9, 2017. The company's operation manager informed the claimant at that time that the company was issuing him three warnings for incidents that had taken place on June 7 and on June 8, 2017, the operations manager further informed the claimant that the most recent three warnings, in addition to a previous warning that he had received from the company, would result in the claimant's termination from employment.

Under company policy, employees who accumulate four warnings within a six month period are subject to discharge. Mr. Hannah had previously been given a warning for attendance.

The first of the three warnings served upon Mr. Hannah on June 9, 2017, was given to the claimant because he made an error pulling or correctly identifying cases of products while performing his work on June 7, 2017. Mr. Hannah was new in the department at that time and

was working without a trainer or supervisor in the area, and was unaware he was doing his work improperly.

The second and third warnings served upon the claimant on June 9, 2017 were for incidents that had taken place the prior day, June 8, 2017. On the morning of June 8, 2017, Mr. Hannah had violated the company's cell phone rule by glancing at his cell phone located in his pocket to determine whether it was time to go on break. The company policy provides that personal cell phones, pagers and related devices can be used only during break periods and not to be used in working areas. The use of a cell phone or other devices in working areas can result in disciplinary action. Because there were no time clocks in the working area, Mr. Hannah briefly glanced at his phone in his pocket to determine if it was time to go on break. The claimant did not know that even checking the time of day constituted a "use" of an electronic device as defined by the company. Later that day, Mr. Hannah went to his break three minutes early because he was unsure of the time. The claimant's supervisor saw the claimant and told Mr. Hannah that he should finish his break three minutes early and return to his "work area" early. The claimant complied. Because he complied, and went to the work area, he was not present in the break room at the end of the scheduled break area to partake in "stretching exercises" that had recently been implemented by the company in the department.

Mr. Hannah made statements in his behalf at the time of his discharge because it was unexpected. The claimant had not been informed at the time of the incidents that he would receive warnings for the incidents that had occurred two days before and was surprised not only by the warning, but also because they were served upon him together and had resulted in the company's decision to discharge him.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional and disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits, it does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

In discharge cases, 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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 Ct. App. 1992).

The propriety of a discharge is not at issue in an employment case. The employer may be justified in discharging employee, but the employee's conduct may not amount misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrong doing or repeated careless or negligence that equals willful misconduct culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000).

In the case at hand, the claimant was a new employee to a different department and because lack of training and familiarity with company product, made a product identification error. There has been no showing that claimant's mistake was willful and no showing that the claimant repeatedly made the same or similar mistakes. The claimant did not expect to be warned. The second incident took place when Mr. Hannah briefly glanced at his cell phone in his pocket only to ascertain the time of day because there were no clocks in the area and he was expected to take his breaks at proper times. Later that day, the claimant inadvertently went to break a few minutes early because there were no clocks in the work area and was then aware that he could not have his cell phone. The claimant missed the department's "exercise warm up session" with other department employees because he had been instructed by his supervisor to return to his work area a few minutes early because he had gone to break early. The claimant was new to the department and the exercise program, near the break area, had only recently been instituted.

Based upon the evidence in the record, the administrative law judge concludes that the final acts that resulted in the claimant's discharge did not rise to the level of intention disqualifying misconduct on the part of the claimant. The claimant was new to the department and was attempting to meet the employer's expectations while learning his job. The claimant's violation of company rules was not willful, or of such a degree or reoccurrence to establish culpability. While the decision to terminate the claimant may have been a sound decision from a management viewpoint the evidence in the record does not establish intentional misconduct sufficient to deny unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 27, 2017, Reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn