

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M WEITTENHILLER
Claimant

APPEAL NO. 13A-UI-00634-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/16/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated January 11, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 14, 2013. Claimant participated. The employer participated by Ms. Elena Rocha, Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant was employed by Wal-Mart Stores, Inc. from November 14, 2007 until December 12, 2012 when she was discharged from employment. Ms. Weittenhiller held the position of full-time sales associate and was paid by the hour. Her immediate supervisor was Deanna Rindy.

The claimant was discharged based upon an incident that had taken place at the store on December 5, 2012. On that date a customer had returned a bunk bed and the claimant and another employee placed the bunk bed on a shelf adjacent to the normal place where the bunk bed display was currently placed. Although the shelf where the employees placed the bunk bed was higher than the other shelf, Ms. Weittenhiller and the other employee did not anticipate difficulty in placing the bed on the shelf. After doing so, however, Ms. Weittenhiller noticed that she had felt a "pull" in her back and reported that matter to the company as she was required to report any injuries.

Because the employer in reviewing the matter concluded that Ms. Weittenhiller and the other employee had violated the company's policies about lifting and placing items that were too heavy or by placing them in a spot too high, a decision was made to terminate Ms. Weittenhiller from her employment. The claimant's termination was triggered by the company rule that

requires discharge if an employee receives more than three warnings for any reason within a one-year period. Although the claimant had not been previously warned for a policy violation, she had been warned three times in the past for attendance issues.

It is the claimant's position that her actions were caused by poor judgment and her desire to immediately place the item back for sale to benefit the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct 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:

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be 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 Ct. of Appeals 1992).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

In this case the claimant was discharged because she made a poor judgment call in placing a returned bunk bed on to a shelf where the claimant believed the item could be re-sold by the employer for the benefit of the Wal-Mart company. Claimant did not anticipate that the area that she lifted the bed on to was too high under company policies or that the weight of the bed was too heavy. Claimant had another employee assisting her. Claimant also did not believe that the location where she and the other worker were placing the bed was violating any company policy that she was aware of at the time.

Because the claimant subsequently had to report the incident because she had strained her back and because the claimant had three other warnings that were unrelated in any way to the final incident, she was discharged from employment.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. The administrative law judge concludes that the claimant's conduct was an isolated incident of poor judgment and was not motivated by an intentional disregard for the employer's interests or standards of behavior. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 11, 2013, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Benefits are allowed, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs