

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLTON C CONN
Claimant

APPEAL NO: 15A-UI-01645-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/11/15
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 27, 2015 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the March 9 hearing. Matthew Tillman, an assistant manager, appeared on the employers' behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant in June 2014 to work as a full time service manager. When the claimant started, he watched training videos for three days. He does not remember a safety video informing employees it was a safety violation to lower a lift with an employee inside a vehicle.

Prior to January 13, 2015, the claimant received a warning for the way he talked to a manager. The claimant acknowledged he deserved that warning for getting upset and getting defensive toward a manager. Even though the claimant received this warning, he had no understanding his job was in jeopardy. The employer, considered the claimant's job in jeopardy even though the employer had not warned him of this fact. The employer considered the claimant's job in because of customer services issues, such as not informing a customer about damage on his vehicle that had occurred while being serviced and for giving a customer an incorrect refund.

On January 8, the claimant put a battery in a co-worker's vehicle. After the battery had been installed, the co-worker informed the claimant he did not have money to pay for the battery. The claimant told the employee that if he took his vehicle without paying for the battery, he could get fired. The claimant did not have any authority to confront an employee about taking merchandise without paying for it. Only assistant managers, such as Tillman, can do that.

When the employee took his vehicle without paying for the battery, the claimant reported the incident to the safety manager and other associates. On January 10, the claimant learned the employer was investigating this incident.

On January 13, the claimant lowered a vehicle on a lift when a co-worker was in the vehicle. The claimant did not think he did anything wrong. When he has been in a vehicle and other employees lowered the lift, nothing was said. The employer considers this a safety issue.

After Tillman investigated the January 13 incident, he made the decision to discharge the claimant. At the end of his January 13 shift, the employer discharged the claimant. The claimant understood the employer discharged him primarily because he allowed another employee to leave work without paying for a battery on January 8 and secondarily because of a safety issue when he lowered the lift while an employee was in the vehicle.

The claimant established a claim for benefits during the week of January 11, 2015. He has filed and received benefits for the weeks ending January 17 through February 14, 2015. The employer did not participate at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for business reasons. The claimant may have used poor judgment when he lowered a vehicle with an employee in the vehicle, but when this happened to him and nothing was said. The evidence does not establish that this type of conduct was covered in training videos. Based on his personal experience, the claimant would not know this type of conduct could lead to his termination.

The claimant did not have the authority to stop an employee from taking his vehicle without first paying for a battery the claimant had installed. The claimant reported the incident, but his failure to contact Tillman or someone who could confront the employee does rise to the level of work-connected misconduct. The employer did not establish that the claimant committed work-connected misconduct. As of January 11, 2015 the claimant is qualified to receive benefits.

DECISION:

The representative's January 27, 2015 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons but did not establish that he committed work-connected misconduct. As of January 11, 2015 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can