

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK M KADUCE
Claimant

APPEAL NO. 09A-UI-09150-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 05/24/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Patrick M. Kaduce filed a timely appeal from an unemployment insurance decision dated June 23, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held July 8, 2009, with Mr. Kaduce participating. The employer, Wal-Mart Stores, Inc., advised the administrative law judge prior to the hearing that it did not intend to participate.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Patrick M. Kaduce was employed by Wal-Mart Stores, Inc. from July 8, 2004, until he was discharged May 21, 2009. He last worked as an inventory control specialist. Mr. Kaduce was discharged because of an incident involving a coworker. The two individuals were unloading a truck. The coworker was not working as fast as Mr. Kaduce wished. An argument ensued in which Mr. Kaduce said, "I dare you to slap me." The coworker threw a box at Mr. Kaduce, hitting him in the face. The argument escalated and Mr. Kaduce bumped the other employee. Mr. Kaduce was aware that violence in the workplace is not condoned by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant 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 evidence in the record establishes that the claimant was discharged for a verbal and physical altercation with a coworker while both were on duty. This evidence is sufficient to establish misconduct as that term is defined for unemployment insurance purposes. Benefits are withheld.

DECISION:

The unemployment insurance decision dated June 23, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw