

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROGER YANCY**  
Claimant

**APPEAL NO: 14A-UI-08707-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 07/27/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 12, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 10, 2014 and continued on September 12, 2014. The claimant participated in the hearing. Michael Peckis, Club Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time people greeter for Wal-Mart from September 27, 2011 to July 19, 2014. He was discharged after several female employees complained to the employer of his unwanted attention.

The employer cited several occasions where the claimant acted in an aggressive manner toward female co-workers and customers. One complainant stated when she first started working there the claimant repeatedly asked her out and even followed her to her car on one occasion asking her out. She was not interested and told him so but he persisted. He then continued to bother her and while in the break room during a store event the claimant very aggressively demanded she give him her phone number. She did not want to do so but he repeatedly pushed his phone toward her in an attempt to get her to enter her number in his cell phone. Another time, the claimant, who uses a mobility scooter, literally cornered her one day between the hearing aid center and the customer service center. That employee told a male friend how uncomfortable the claimant was making her and her friend confronted the claimant outside work and told him to leave her alone.

Another associate whom the employer interviewed after receiving complaints about the claimant stated he made inappropriate comments to members of Sam's Club and asked a few of those women out as well. This witness was present when the claimant made a comment about a

female customer's appearance and then stated he "probably shouldn't have said that." The claimant "had a tendency to be unprofessional with female employees in a manner that was not good for the store."

Another reporting witness also complained about comments the claimant made to her such as when she was wearing high heels he stated he "liked the way she walked away in those high heeled shoes." The reporting women felt it was the claimant's intention to make them and other female associates uncomfortable.

The employer talked to the claimant one to two weeks before the termination occurred and asked him if he knew why he was there and he said no. The employer told him it had come to his attention that several female employees were complaining about him bothering associates and the claimant stated he was not there. The claimant denied most of the charges and the employer told him that his actions could be considered sexual harassment and he needed to be sensitive to how his actions and comments made others feel.

The employer talked to the employer's Employment Advisory Services and was told to interview witnesses. After doing so and learning of the situations outlined above the employer spoke to the Employment Advisory Services again and at that time they stated the claimant's employment should be terminated. The employer notified the claimant of his termination July 19, 2014.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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).

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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 employer did not supply enough specific information for the administrative law judge to make a determination that the claimant was sexually harassing his female co-workers as well as some of the guests. While believing the claimant did do each act accused of, despite his denials to the contrary, without specific dates, times and first-hand witnesses or at least statements from the first-hand witnesses, there is not enough evidence for the administrative law judge to find the employer has met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, while the claimant would do well to learn what sexual harassment is and what makes his female co-workers uncomfortable, benefits must be allowed.

#### **DECISION:**

The August 12, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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