

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHAEL J GUSTAFSON
Claimant

APPEAL NO. 09A-UI-05413-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/01/09
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 4, 2009. Claimant Rachael Gustafson participated. Dave Schroeder, Assistant Manager, represented the employer. Exhibits One through Six were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rachael Gustafson was a full-time employee of Wal-Mart from September 2006 until March 1, 2009, when the employer suspended her for selling tobacco to a person under the legal age to purchase tobacco. On March 2, the employer discharged Ms. Gustafson from the employment in connection with the tobacco sale. Ms. Gustafson had worked as a cashier beginning a year after the employment started.

On March 1, 2009, Ms. Gustafson unintentionally sold tobacco to a person under the legal age to purchase tobacco. Ms. Gustafson had received appropriate training and was aware of the employer's tobacco sales policy and procedure. Ms. Gustafson followed the steps required by the employer's tobacco sale policy. Ms. Gustafson requested and reviewed the customer's photo ID. Ms. Gustafson made an error in entering the customer's birth date into the cash register. Ms. Gustafson erred when she entered the year of the customer's birth. Based on the erroneous date Ms. Gustafson had entered, the cash register provided a message indicating that the person was of legal age to purchase tobacco and Ms. Gustafson went forward with the sale. Had Ms. Gustafson entered the correct birth date, the cash register would have provided a message prohibiting the sale. At the time in question, Ms. Gustafson was assigned to one of the two registers where customers could purchase tobacco products. Ms. Gustafson was performing some cleaning duties when she noticed three customers waiting at her register. One

of those customers was the person assisting with a police sting regarding sale of tobacco products to minors.

Immediately following the transaction, a customer service representative called Ms. Gustafson away from her register to meet with a police officer, who issued a citation for unauthorized sale of tobacco products to a minor.

The employer considered only this incident in making its decision to discharge Ms. Gustafson from the employment. There were no prior similar incidents.

REASONING AND CONCLUSIONS OF LAW:

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 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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence indicates that Ms. Gustafson's unauthorized sale of the tobacco products to the minor was unintentional. Ms. Gustafson made a good faith effort to follow the employer's tobacco sale procedure and the law, but simply erred in entered the birth date information. The evidence fails to establish willful or intentional disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Gustafson was discharged for no disqualifying reason. Accordingly, Ms. Gustafson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Gustafson.

DECISION:

The Agency representative's March 23, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css