

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE J FORD**  
Claimant

**APPEAL NO. 12A-UI-04801-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 03/25/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated April 18, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 21, 2012. The claimant participated. The employer participated by Mr. Tony Lai, assistant loss prevention manager.

**ISSUE:**

At issue is whether the claimant was discharged for a current act of misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Carrie Ford was employed by Wal-Mart Stores, Inc. from June 15, 1999, until March 29, 2012, when the claimant was discharged based upon the employer's belief that she had falsified her time records. Ms. Ford most recently held the position of full-time department manager and was paid by the hour. Her immediate supervisor was Tyler Ball.

On January 4, 2012, the company's loss prevention department noticed a minor discrepancy in the claimant's time card. The video camera showed that the claimant arrived at the employer's facility at 5:17 a.m. However, it was noted that the claimant had adjusted her timecard to reflect that she had arrived at 5:15 a.m. that day. Similar discrepancies of one to two minutes were found on two other dates. On February 29, 2012, company records showed that the claimant had entered the company's parking lot at 5:15 a.m. and, subsequently, her timecard reflected that she had begun work at 5:15 a.m. The employer believed the claimant had adjusted her timecard for one to two minutes to conceal the fact that she was a minute or two late for work. Although the employer was aware of what they believed to be timecard violations from January 4, 2012, and most recently on February 29, 2012, a decision was not made to terminate Ms. Ford from her employment until one month later on March 29, 2012. The evidence in the record does not establish any disqualifying conduct on the part of the claimant between February 29, 2012, and March 29, 2012.

The claimant denies intentionally falsifying any time records. Due to issues with the timecard apparatus, the claimant, at times, was unable to get the card reader to accept her timecard immediately, requiring the claimant to make numerous tries or to write in her time later when she noted that the timecard had not been accepted. The claimant acknowledges that, at times, she was late for work, but specifically denies altering her timecard to conceal tardiness or for any other reason that was contrary to company policies or expectations.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes a current act of 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 benefits. The focus is on deliberate, intentional, or culpable acts by the employer. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 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 past acts. The termination of employment must be based upon a current act. See 871 IAC 24. 32(8).

The evidence in the record establishes that a decision was made to terminate Ms. Ford from her employment based upon approximately four instances when the claimant had adjusted her timecard to reflect one to two minutes of time. The claimant testified that, at times, her timecard would not accept her badge swipe, requiring her to later enter her time. The claimant testified that she did not intentionally falsify her timecards and would not jeopardize her long-term employment by doing so.

The evidence in the record establishes the employer was aware of changes in the claimant's time cards beginning on January 4, 2012, and concluding on February 29, 2012. However, the employer took no action for a one-month period before discharging the claimant. There is no evidence in the record of any disqualifying misconduct on the part of the claimant during the one-month period preceding the claimant's discharge 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. While the decision to terminate Ms. Ford may have been a sound decision from a management viewpoint, the evidence in the record does not establish that the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 18, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw