

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE M PHIPPEN
Claimant

APPEAL NO. 06A-UI-09687-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/27/06 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 22, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 17, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Tammy Cochran participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from February 25, 2005, to August 29, 2006. When her employment ended, she was working as a cashier. The claimant received a verbal coaching on March 27, 2006, for finalizing a merchandise display before it was completed. She received a written coaching on June 22, 2006, for absenteeism. She was given a final warning and decision-making day on August 7, 2006, for what the employer considered unsafe lifting techniques after the claimant hurt her back lifting a merchandise tote. This happened when the claimant was assigned the task of unpacking what she believed were totes of candy. One of the totes was actually batteries, which the claimant did not realize until she started lifting the tote and hurt her back.

On August 28, 2006, the claimant was monitoring the self-service register. She assisted a customer who could not get a child support credit card to work. The customer was angry because the card would not work. The claimant was polite in assisting the customer but took offense when the claimant told her that based on what she knew about the card, she would be better off calling the department of human services where she could talk to a person rather than the 800 number on the back of the card. The woman later falsely accused the claimant of being rude. The employer discharged the claimant on August 29, 2006, for being rude to the customer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the

proper standard and burden of proof. The claimant testified credibly about what happened on August 28, and the employer's evidence was unreliable hearsay.

DECISION:

The unemployment insurance decision dated September 22, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs