

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY M BOYLE
Claimant

APPEAL NO: 15A-UI-01764-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/04/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 5, 2015 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she had had been discharged for disqualifying reasons. The claimant participated at the March 9, 2015 hearing. Julie Bluhm and Dustin Newhoff, the asset protection manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 22, 2014. She worked 30 to 32 hours a week in the apparel department. When the claimant started this employment, the employer gave her information about the employer's arrest and conviction policy. The policy informs employees that if they are arrested or convicted, they are subject to suspension or termination. When an employee is arrested or convicted for a felony or misdemeanor, the employer investigates to determine if the charges are job-related.

On September 19 the claimant was involved in a physical altercation with another female. After the claimant was treated at an emergency room, she was charged with simple assault. The employer suspended her on September 22 because she was arrested and charged with simple assault.

The claimant went to court in December 2014. The simple assault charge was amended to disorderly conduct. The claimant accepted a deferred prosecution on the disorderly conduct charge. The claimant understands that if she meets all conditions the court imposed by March 11, 2015, the disorderly conduct charge will be dismissed or will not show up on her record. The employer's corporate legal staff determined the claimant's disorderly conduct charge justified the claimant's discharge. The employer discharged the claimant on December 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Even though the claimant accepted a deferred prosecution; the employer considered this the equivalent of a guilty plea or conviction. The facts do not establish that the September 19 incident was work-related. AS a result, the evidence does not establish that the claimant committed work-connected misconduct. As of January 4, 2015, the claimant is qualified to receive benefits.

DECISION:

The representative's February 5, 2015 (reference 01) determination is reversed. The employer discharged the claimant for business reasons but the employer did not establish that the claimant committed work-connected misconduct. As of January 4, 2015 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can