

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brenda M. Cook was employed by Wal-Mart Stores, Inc. from November 14, 1995 until she was discharged August 25, 2005. She last worked as a claims associate. Ms. Cook received a copy of company policies in April of 2001. The company prohibits the use or possession of illegal drugs at any time. It requires that employees notify the company if they are arrested for any crime involving illegal substances.

Ms. Cook was arrested and charged with possession of methamphetamines. She notified the employer and, pursuant to company policy, was suspended without pay. Ms. Cook accepted a deferred judgment and was placed on probation. Following company policy, the employer discharged Ms. Cook. Since this separation from employment, unemployment insurance benefits have been applied to the claimant's prior overpayment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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).

An employer may legitimately prohibit illegal activities on or off duty. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). The evidence establishes that Wal-Mart has adopted a policy prohibiting possession of illegal drugs at any time. The evidence establishes that Ms. Cook was arrested for such a violation and that she has accepted probation as part of a deferred judgment. This evidence persuades the administrative law judge that the claimant was discharged for violating the employer's policy.

Iowa Code section 96.3-7 requires that unemployment insurance benefits paid to a claimant or applied to a claimant's behalf in error must be recovered. Therefore, the \$1,285.00 in unemployment insurance benefits paid to Ms. Cook or applied to her prior overpayment must be recovered.

DECISION:

The unemployment insurance decision dated October 5, 2005, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,285.00.

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