

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT E MCDANIEL
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-24095-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Robert E McDaniel, the claimant/appellant, filed an appeal from the October 26, 2021, (reference 02) unemployment insurance decision that denied benefits because of a September 27, 2021 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2021. Mr. McDaniel participated and testified. The employer participated through Tim Garphwaite, online grocery pick up manager /coach, Kristen Blanding, hearing representative.

ISSUE:

Was Mr. McDaniel discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McDaniel began working for the employer on January 15, 2020. He worked as a full-time digital personal shopper. His employment ended on September 27, 2021.

The employer's policy provides that employees may sign up for a discount card (10 percent off), but only the employee may be used by the employee only and only for the employee. The employee's spouse or partner, or dependent child may also receive and use a card. To be able to receive the card, an employee must acknowledge the terms of the card. In relevant part, the terms include, but are not limited to, misuse of the card e.g., others using the employee's card with the employee's knowledge, may result in termination of employment. Mr. McDaniel acknowledged the rules when he received the card.

On September 27, 2021, an employee reported to the employer that Mr. McDaniel had swiped his employee discount card for the employee's husband. The employer began an investigation. The investigation showed that Mr. McDaniel had swiped his employee discount card for others, or he gave his discount card to others so they could get a discount on at least eight times. The employer pulled video evidence showing Mr. McDaniel giving his card to others when they entered to store, and those persons using Mr. McDaniel's discount card. The employer also

pulled video showing Mr. McDaniel swiping his discount card for customers to receive a discount. Mr. McDaniel testified that he swiped his discount card multiple times for family, friends, and customers he knows to help them. Mr. McDaniel further testified that he was not aware that he was violating a rule because he did not read the discount card rules. The employer terminated Mr. McDaniel's employment on September 27, 2021 for violating the employer's discount card use policy.

Mr. McDaniel testified that he always felt that the employer was watching and stereotyping him based on his skin color. At one point, Mr. McDaniel filed a racial discrimination complaint with Mr. Garphwaite. Mr. McDaniel, Mr. Garphwaite and the person against whom Mr. McDaniel had filed the complaint had a conversation and things got better with that person.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. McDaniel was discharged from employment due to job-related misconduct.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. McDaniel misused his discount card multiple times for family, friends, and customers he knew. Although he did not read them, Mr. McDaniel acknowledged the rules for the card. Mr. McDaniel's multiple violations of the employer's policy constitutes misconduct. Benefits are denied.

DECISION:

The October 26, 2021, (reference 02) unemployment insurance decision is affirmed. Mr. McDaniel was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Daniel Zeno
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January 25, 2022
Decision Dated and Mailed

dz/scn