

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLENE SCHUMAN DEEGAN
Claimant

WALMART INC
Employer

APPEAL 24A-UI-05970-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/27/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On June 25, 2024, employer Walmart Inc. filed an appeal from the June 18, 2024 (reference 04) unemployment insurance decision that allowed benefits to claimant Charlene Schuman Deegan, determining the employer discharged her on May 29, 2024 and failed to establish the discharge was for willful or deliberate misconduct. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on June 27, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 8:00 a.m. on Friday, July 12, 2024. Claimant Charlene Schuman Deegan personally participated. Employer Walmart Inc. participated through Ryan Rand, Store Manager; Jesse Albin, Asset Protection Coach; and Marcie Naylor, Store Lead; and Equifax UIC Monique Hurston testified about the employer's participation in the fact-finding interview. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether claimant was discharged from employment for disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Walmart on October 26, 2020. She worked full-time hours for the company, most recently as a team lead in the deli. Claimant's employment ended on May 29, 2024, when the employer discharged her after an investigation into racist statements.

On April 19, 2024, Witness A reported that claimant used the N-word¹ on a prior date to describe a coworker. According to Witness A, they walked into the back room with claimant and saw that coworker Tammy's phone was there, but Tammy was not present. Claimant asked Witness A where Tammy was, and Witness A responded that they did not know. Claimant then said that Tammy was "probably off doing some [N-word] shit." No one else was present for this incident. Witness A reported this to Albin, who spoke with Ethics, who instructed Albin to open an investigation.

Albin took a statement from Witness A, who repeated what they had initially reported. Albin also spoke with another witness, with Tammy, and with claimant. Ultimately, the employer had

¹ The employer and all witnesses whose statements read or referred to during Rand's testimony allege claimant used the full word. The word will not be reproduced here.

Witness A's statement that claimant said the N-word, and it had claimant's statement denying she used the N-word. When Albin and Rand turned the investigation statements over to Ethics, the ethics advisor recommended the employer conduct retraining. Because this was a "he said/she said" incident, the employer could not determine whether claimant made the statement alleged.

On or about May 22, 2024, Tammy learned that another employee ("Witness B") had allegedly heard claimant use the N-word sometime in the past. She approached Witness B and encouraged them to go to the employer with what they had heard. On May 22, Witness B reported that claimant was talking to them about the deli being behind in stocking. Claimant told them, "We wouldn't be so far behind in stocking if [Tammy] did more... she's always walking around like a lazy fucking [N-word]." Again, no one else was present for this incident. Witness B said they did not report this comment when they heard it because they were new and were nervous. They did not approach Tammy at the time they heard the comment because they did not know Tammy well and did not know how she would react.

Albin received Witness B's report and forwarded it to Ethics the same day. After Ethics received this second complaint, the ethics advisor recommended the employer discharge claimant. Now that the employer had two complaints about claimant, the ethics advisor found the complaints credible. The employer did not reinterview claimant or ask her any questions about this additional allegation.

Claimant denies ever using the N-word. She believes all of the allegations against her stem from an acrimonious working relationship with Tammy. Claimant was talking to an employee one day and trying to think of which of the Little Rascals he looked like. She was trying to come up with the name "Alfalfa," but Tammy assumed she was talking about "Buckwheat" and thought claimant was racist. Ever since that day, Tammy has not liked claimant and has been out to get her.

Claimant opened the claim for unemployment insurance benefits effective August 27, 2023. She then filed an additional claim date effective May 26, 2024, and since then she has filed six weekly continued claims for benefits, most recently for the week ending July 6, 2024 (as of the hearing date). Claimant has received benefits in the amount of \$3,020.00. Iowa Workforce Development held a fact-finding interview on June 17, 2024. The employer did participate in the fact-finding interview through a third-party representative witness and documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)(a) and (d) provide:

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 disqualification shall continue 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...

d. For the purposes of this subsection, “*misconduct*” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual’s employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer’s property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual’s regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

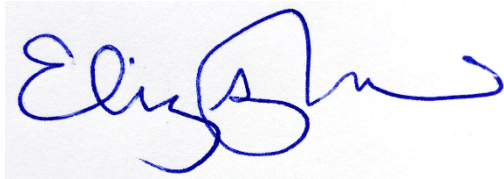
In a discharge from employment, the employer carries the burden of proving disqualifying misconduct. Here, the employer has not presented sufficient evidence to meet that burden of proof. The employer's method of determining the credibility of the allegations against claimant is dubious. The employer threw up its hands when faced with one "witness vs. witness" unobserved allegation. But it determined that when it had two such allegations those allegations were credible, did not even speak with the claimant, and discharged her. None of the employer witnesses described why Witness A and Witness B were more believable than claimant. The issue here is not whether using the N-word is misconduct, but whether the employer has proven that claimant used that word. I find the employer has not proven she did. The employer has not met its burden of proving disqualifying, job-related misconduct. Benefits are allowed.

As benefits are allowed based on this separation, the issues of overpayment and chargeability are moot.

DECISION:

The June 18, 2024 (reference 04) unemployment insurance decision is affirmed. The employer discharged claimant from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

July 16, 2024
Decision Dated and Mailed

LJ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.