

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN R BAILEY
Claimant

APPEAL NO: 18A-UI-02935-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 01/21/18
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Walmart Inc. filed a timely appeal from a representative unemployment insurance decision dated February 21, 2018, (reference 02) that held claimant eligible for unemployment insurance benefits, finding that the claimant was dismissed from work on January 22, 2018, concluding that the record did not show willful or deliberate misconduct. After due notice was provided, a telephone hearing was scheduled for and held on April 12, 2018. Claimant participated. Participating on behalf of the claimant was Mr. James Neal, Attorney at law. Employer participated by Mr. Thomas Kuiper, Hearing Representatives and witnesses Mr. Al Morales, Co-Manager and Mr. Samuel Velasquez, Asset Protection Manager. Employer's Exhibits 1, the administrative file, was admitted into the hearing record without objection.

ISSUE:

Whether the claimant was discharged for intentional work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Joan R. Bailey was employed by Walmart Inc. from March 24, 1994 until January 22, 2018, when she was discharged from employment. Ms. Bailey generally worked as a garden center employee and greeter, but also performed the duties of stocker and sorter and other duties as directed by her manager. Ms. Bailey was paid \$17.00 per hour. Her last immediate supervisor was Mr. Scott Ross.

Joan Bailey was discharged from her employment with Walmart Inc. on January 22, 2018, based upon the results of an investigation conducted by the company to determine if Ms. Bailey had exceeded 15 minutes while taking breaks from her duty as authorized by the company. Mr. Velasquez, the asset protection manager had been requested to review security tapes for this purpose. Mr. Velasquez reviewed security films at the Walmart Facility for the dates of January 1, 2018 through January 14, 2018. Based upon his observations, Mr. Velasquez reported that Ms. Bailey had entered and remained in the company's break room in excess of 15 minutes on January 6, 7, 8, 13, and 14, 2018. The amount of time the claimant remained in the break area

in excess of the allowed 15 minutes varied from six minutes to a maximum of 19 minutes beyond the time authorized. It appears that on other dates, Ms. Bailey either did not exceed the permissible number of break minutes, took less than the authorized amount of time, or took no break at all.

The results of Mr. Velasquez's investigation were presented to store management on January 14, 2018, and sent to the company's corporate division for a review. After reviewing the matter, the corporate division determined that Ms. Bailey should receive a warning.

Walmart company policy provides that employees are subject to discharge if they receive more than three warnings while employed by the company. Based upon review of the documents in the claimant's file, the employer concluded that the claimant had received official warnings from the company on three previous occasions, April 15, 2017, May 27, 2017 and July 1, 2017. Each of the warnings had been warnings that had been given to Ms. Bailey because she was not in her work area but performing work in a different area of the store. Although none of the warnings in the file contained the claimant's signature or any acknowledgment of receipt of the warnings, the employer concluded that the claimant had been warned on three previous occasions and that she was subject to discharge because her violation of the 15 minute break rule would constitute her fourth warning and discharge from employment.

Ms. Bailey worked under the direct supervision of Scott Ross. Because the claimant had fewer duties in the garden center during a large portion of the year, the claimant was often directed by Mr. Ross to work in other areas of the store or to sort returns. Occasionally a question would arise as to why Ms. Bailey was working in a particular area of the store and Ms. Bailey would explain that he had been instructed to do so by Mr. Ross. In some cases, Ms. Bailey may have been directed to then go to a different area of the store to work, Ms. Bailey did not consider the inquiries or redirection of her duties to be a warning from the company or any indication that her job was in jeopardy. Ms. Bailey did not sign any copies of the purported warnings in her employee file and the claimant was not aware that she had been warned or placed on notice that the employer considered her break times to be excessive, or that she should modify her behavior or face discharge.

Ms. Bailey denies intentionally violating the company's 15 minute break rule. It was Ms. Bailey's practice to informally monitor the time that she was on break by checking her watch. Ms. Bailey asserts that she often took short breaks or no break whatsoever and that she was not aware that her break times were either an issue or being scrutinized by the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). The claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work connected misconduct. Iowa Code Section 96.5-2-a. The employer has the burden of proof the claimant was discharged for work connected misconduct as defined by the Iowa Employment Insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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 misconduct of wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661,665 (Iowa 2000).

For unemployment insurance purposes misconduct amounts to a deliberate act and material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard behavior the employer has a right to expect from its employees or an intentional substantial disregard of the employer's interests or of the employees duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity in advertence or ordinary negligence in isolated incidence, or good faith errors in judgment or discretion are not deemed to constitute work connected misconduct. See 871 IAC-24.32(1)(a).

In the case at hand, Ms. Bailey, a 23 year employee of the company was unexpectedly discharged from employment based upon the company rule that provided for discharge an employee received more than three warnings while employed by the company. The claimant believed that she was following the instructions of her immediate supervisor to temporarily work in a different area of the facility, but on three occasions cited by the company, there had been an inquiry about where Ms. Bailey should be working. Although those inquiries were thought to be immediately be resolved by Ms. Bailey's explanations, the inquiries were later reduced to writing and then considered to be official warnings. Ms. Bailey was not aware that they were considered warnings and she had not signed them or acknowledged their receipt.

The final infraction that caused the claimant to be discharged took place when the employer chose to select Ms. Bailey for review to determine if she was following the company rule that

required employees to limit their morning and afternoon breaks to 15 minutes each. Once again, Ms. Bailey was not aware there was an issue regarding the length of her breaks, the claimant had not been warned or placed on notice that she needed to modify her behavior.

Although the administrative law judge does not condone nor sanction an employee taking excessive break time, inasmuch as the employer had not previously sufficiently warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy procedure or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written and acknowledged), detailed and reasonable notice should be given. The claimant had been directed by her supervisor to work in different areas of the store and had explained this at the time. Warnings for this reason were unjustified. The claimant's excessive break times may have warranted a warning but was not sufficient to discharge her or disqualify her for benefits.

DECISION:

The representative's unemployment insurance decision dated February 21, 2018, reference 02 is affirmed. Claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn