

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH YADON
Claimant

APPEAL NO. 14A-UI-01091-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/29/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 23, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 19, 2014, by telephone conference call. The claimant did not respond to the hearing notice and did not participate. Enclosed with this file is a copy of the Clear2there hearing control sheet, which shows that the claimant did not call in and provided a telephone number. The employer participated by Heather Snyder, human resources and Lee Sogo, assistant manager. The record consists of the testimony of Heather Snyder and Employer's Exhibits 1-12. Official notice is taken of agency records.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked at the Wal-Mart store located in West Des Moines, Iowa. The claimant was hired on July 28, 2011, as an inventory control associate. He was a part-time employee. His last day of work was December 25, 2013. He missed two shifts of work. He appeared in Heather Snyder's office on December 31, 2013. When asked where he had been, he said that he had been in jail for possession of drug paraphernalia. The claimant was informed he would be placed on unpaid suspension until resolution of the charges. The claimant said that he had already pleaded guilty in order to get out of jail. The employer verified the claimant's statements by checking Iowa Courts on line.

The employer has a written policy, of which the claimant was aware, that conviction of a drug related offense would result in termination. In addition, the claimant was on his third and final warning and would have been terminated for that reason.

The claimant has not made any weekly claims for benefits and has not been paid any unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies a claimant from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the workers' duty to the employer. An employer is entitled to have reasonable work rules, which include prohibitions against violation of state and federal law. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant pled guilty to a criminal charge of possession of drug paraphernalia. The employer has a policy that calls for termination in the event an employee is convicted of or pleads guilty to a drug offense. The claimant informed the employer that he had pled guilty to possession of drug paraphernalia. In addition, he was on a third and final warning and would have been terminated even if the employer did not have the policy concerning termination in the event of drug conviction or guilty plea. The claimant intentionally violated a known employment policy. This is misconduct. Benefits are denied.

A review of agency records indicates that no weekly claims have been filed and the claimant has not been paid any benefits. The overpayment issue is therefore moot.

DECISION:

The decision of the representative dated January 23, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefits amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs