

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CATHERINE E ANDERSON  
PO BOX 271  
NEWHALL IA 52315

WAL-MART STORES INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02163-DWT  
OC 01/18/04 R 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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 are based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 16, 2004 decision (reference 01) that concluded Catherine E. Anderson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2004. The claimant participated in the hearing. Alan Jensen, the store manager, and Yolanda Hassler, a training coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on May 5, 1999. She worked as a full-time cashier. Her supervisor was Danielle Hops.

During her employment, the employer gave the claimant several written warnings. As a result of her previous warning, by early November 2003 the next written warning the claimant received would result in her employment termination.

On November 5, 2003, the claimant and other employees were in the employee lounge. Employee C went to the smoking lounge but did not get the door shut. The claimant stood up and made a remark about Employee C not shutting the door. There were a few words exchanged between the two women. Hassler heard the claimant tell Employee C that she was talking to her and if Employee C wanted to do something about it they could do something about it right away. Nothing happened in the lounge and Hassler did not think too much about it, even though the claimant appeared somewhat agitated.

Later that day, Employee C told Hassler the claimant physically threatened her after they went to floor to work by telling Employee C she was going to hit her on the head. Hassler, another employee, and Employee C reported the incidents to Jensen. When Jensen talked to the claimant on November 5 or 7, she denied she had physically threatened Employee C. The employer concluded the claimant gave Employee C the impression she would physically harm and threaten her. In accordance with the employer's policy, the employer could have discharged the claimant immediately. Since the claimant was already scheduled for a medical leave, the employer indicated any necessary discipline would take place when the claimant came back from her leave. '

On January 20, 2004, the claimant returned from her leave of absence. The employer then discharged her for physically threatening another employee on November 5, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 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 wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a 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 of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The facts, according to the claimant and an eyewitness, indicate the claimant did not specifically physically threaten Employee C in the employee lounge. The employer concluded the claimant made an implied threat. At the time the remark was made, the employer's eyewitness did not consider the remark significant enough to report it. The eyewitness was not concerned until she learned from Employee C that after the employees returned to the floor to work, the claimant allegedly physically threatened Employee C by indicating she would hit Employee C on the head. Since Employee C is the only person who reported the claimant physically threatened her and the claimant denied making any such remark, the claimant's testimony must be given more weight on this point than the employer's reliance on hearsay information.

Even though threatening another employee with physical violence can result in an employee's immediate discharge, the employer did not immediately discharge the claimant. The claimant understood she could be discharged when she returned from her leave of absence. The employer, however, knew about the November 5 incident before the claimant went on a leave, but did not discipline her. Instead, the employer waited until mid-January when the claimant returned from a medical leave to discharge her for the November 5 incidence. The November 5 incident is not a current act. While the employer established compelling business reasons for discharging the claimant, the facts do not establish that she committed a current act of work-connected misconduct. Therefore, as of January 18, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's February 16, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of January 18, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b