

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BARBARA A WOLFF**  
Claimant

**APPEAL NO. 18A-UI-04541-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 03/11/18**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Walmart (employer) appealed a representative's April 6, 2018, decision (reference 02) that concluded Barbara Wolff (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 7, 2018. The claimant participated personally. The employer participated by Jason Ford, Club Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2017, as a full-time overnight associate. On August 22, 2017, she signed that she read the employer's violence-free workplace policy. Employees who are aware of incidents should report them to a salaried member of management. Managers must take action in accordance with the employer's guidelines.

In mid-September 2017, the claimant was in the break room with another associate, who was her friend, and a team lead. The team lead made statements that made the claimant feel inferior. The other associate called the claimant ugly. The claimant went into a "blind rage" and lightly struck the other associate on the forehead with the tips of her fingers. After this, she left the room. The claimant did not remember what happened until the next day. She went to the associate and apologized.

On January 6, 2018, the employer issued the claimant a first written warning for attendance. She acknowledged it electronically but the employer did not give her a copy. The coaching was given for being absent seven times in a rolling six month period.

On February 19, 2018, the employer asked the claimant to write a statement about the incident in the break room and allowed her to continue working while it investigated. In her statement of February 19, 2018, the claimant admitted to striking an associate. On March 9, 2018, the employer terminated the claimant for violation of its violence free workplace policy.

The claimant filed for unemployment insurance benefits with an effective date of March 11, 2018. The employer participated personally at the fact finding interview on April 5, 2018, by Eras Groves.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred in mid-September 2017. A lead worker knew of the incident and the employer did not investigate. On February 19, 2018, the employer had proof of the incident when it obtained the claimant's statement but the claimant was not discharged until March 9, 2018. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's April 6, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs