

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NENAD ORESCANIN**  
Claimant

**WALMART INC**  
Employer

**APPEAL 18A-UI-03492-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/04/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 2, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on Wednesday, April 11, 2018. The claimant, Nenad Orescanin, participated along with witness Radmala Zaric. The employer, WalMart Inc., did not appear for the hearing. Bosnian/English interpreter Karmela Lofthus assisted with the hearing. Claimant's Exhibits A, B, and C were received and admitted into the record.

**ISSUES:**

Is the appeal timely?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a supervisor, from 2000 until January 30, 2018, when he was suspended and subsequently discharged. Prior to claimant's discharge, both he and his wife both worked for WalMart. Claimant worked first shift and his wife worked second shift. On January 30, 2018, claimant and his wife had a dispute in their home. After the dispute, claimant's wife went and reported it to the police department. Claimant was charged with domestic abuse. In connection with this charge, Polk County District Court entered a no-contact order. (Exhibit A) The no-contact order permits claimant to go to work and be at WalMart Inc. during his scheduled work hours. Claimant and his lawyer presented paperwork related to the charge and the no-contact order to the employer on or about January 31, 2018. The employer immediately suspended claimant pending the outcome of his criminal case. On March 14, 2018, claimant entered a plea of guilty to third-degree harassment. The domestic abuse charge pending was dropped, as was the no-contact order. After notifying the employer of the outcome, claimant was discharged.

## 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, provided he is otherwise eligible.

Iowa Code § 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.

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(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 an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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. In this case, the employer did not participate in the hearing or submit any written documentation in lieu of in-person participation. The employer did not present any relevant policy that claimant violated or show how claimant's conduct harmed the employer. The employer has not met its burden of showing that claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed.

**DECISION:**

The March 2, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn