

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLEN J GASTON**  
Claimant

**APPEAL NO. 16A-UI-13255-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 11/13/16**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Glen Gaston filed a timely appeal from the December 6, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Gaston discharged on November 18, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on January 4, 2017. Mr. Gaston participated personally and was represented by attorney Lynn Smith. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Glen Gaston was employed by Wal-Mart Stores, Inc. as a full-time front end manager at the Sam's Club in Waterloo from July 2016 until November 18, 2016, when Jason Ford, Club Manager, discharged him from the employment. The discharge was based on an allegations made by two female staff members that Mr. Gaston had engaged in inappropriate conversation with the two staff members on November 5, 2016. Mr. Gaston denies that the alleged conversation took place. Mr. Gaston requested that Mr. Ford provide him with documentation or statements concerning the alleged complaint, but Mr. Ford denied that request.

**REASONING AND CONCLUSIONS OF LAW:**

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The employer failed to participate in the appeal hearing and failed to present any evidence to meet its burden of proving that Mr. Gaston was discharged for misconduct in connection with

the employment that would disqualify him for unemployment insurance benefits. The employer failed to present any evidence to rebut Mr. Gaston's assertion that the conversation alleged to have occurred on November 5 did not take in fact occur.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Gaston was discharged for no disqualifying reason. Accordingly, Mr. Gaston is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The December 6, 2016, reference 01, decision is reversed. The claimant was discharged on November 18, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs