

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ELIZABETH A WOODARD**  
Claimant

**WALMART INC**  
Employer

**APPEAL 19A-UI-09410-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/03/19  
Claimant: Respondent (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Walmart (employer) appealed a representative's November 21, 2019, decision (reference 01) that concluded Elizabeth Woodard (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 held on January 6, 2020. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Angela Swanson, Store Manager. The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**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 April 27, 2002, as a full-time service desk associate. The employer has a Disciplinary Action Policy but the claimant did not sign for receipt of it. The claimant trained on various computer based learning modules. The employer is unsure when she trained on issues regarding Money Grams.

On February 24, 2019, the claimant electronically acknowledged receipt of an "Orange" disciplinary action for failure to follow company policies regarding cellphone use and drinking beverages other than water. On May 7, 2019, the claimant electronically acknowledged receipt of a "Red" disciplinary action for failure to follow company policies regarding talking to her own customers and not co-worker's customers. Neither document notified the claimant that further infractions could result in termination from employment.

The claimant asked her supervisor for clarification of an unwritten policy requiring customers to provide a telephone number when collecting a money gram. She understood this to be a new policy and many customers could not provide a telephone number. The supervisor did not

answer the claimant's questions about what she should do. The claimant openly entered the same number for all customers who did not have a telephone. The supervisor said nothing to the claimant about her actions.

On an unknown date, the employer's home office became aware of the claimant's actions and "red flagged" the claimant. On October 16, 2019, it notified the store about the claimant's actions on unknown dates from June 12 through September 12, 2019. The claimant readily admitted her behavior as a reaction to a conversation with her supervisor. The employer terminated the claimant on October 18, 2019, for knowingly keying in inaccurate telephone numbers when customers collected their money grams on unknown dates.

The claimant filed for unemployment insurance benefits with an effective date of November 3, 2019. The employer participated personally at the fact finding interview on November 20, 2019, by Michelle Andrews, a representative from Talx, UCM Services. Ms. Andrews told the fact-finder she did not have specific information about the claimant's separation. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

### **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 on an unknown date and was discovered by the employer on an unknown date. The employer identified an unknown number of incidents between June and September 2019, of which it had knowledge. The claimant was not discharged until October 18, 2019. The incidents and the termination are too remote. 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 November 21, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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