

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYCE M EDMONDS

Claimant

APPEAL NO. 10A-UI-16862-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 11/14/10

Claimant: Appellant (2)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 7, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 25, 2011. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Bryce Edmonds.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a customer service supervisor at the employer's store located in Ottumwa, Iowa. The claimant was initially hired in May 2009. His last day of work was November 12, 2010. He was terminated on November 12, 2010.

The claimant was terminated because of what the employer deemed an inappropriate relationship. The claimant was having a romantic relationship with another employee that he supervised. The claimant discovered that this relationship might be contrary to the employer's policy and he voluntarily disclosed the relationship sometime in late October or early November of 2010. He was terminated on November 12, 2010. He had never been disciplined for any reason prior to his termination.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes the exercise of poor judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to establish disqualifying misconduct. The claimant was involved in a romantic relationship with someone that he supervised. Once he discovered that the employer had a policy against this situation, the claimant made a voluntary statement to the employer. The employer elected to terminate the claimant, rather than demoting him or giving him another job. Since the employer did not participate in the hearing, there was no evidence on why the claimant was terminated or what material breach of the employer's interests occurred. The claimant may have exercised poor judgment but absent additional evidence from the employer, there can be no finding of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 7, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css