

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUN I HYNES
Claimant

APPEAL NO: 13A-UI-12797-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/20/13
Claimant: Appellant (2)

Iowa Code § 96.5(2) - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 13, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2004. She worked full time in the deli. Her supervisor was Ginger Sexton.

In October 2013, the claimant and Sexton had a disagreement about something around 9 a.m. The only people present were the claimant, Sexton and another employee, D. Before this incident, the claimant's job was not jeopardy and she had not received any warnings. When D. involved herself in the disagreement, the claimant became upset with her because D. is younger than the claimant and she was trying to tell the claimant what to do. While the claimant was upset, she called D. a bad word.

After the assistant manager learned the claimant swore at D., she discharged the claimant on October 20, 2013. The claimant understands the employer's policy does not allow employees to swear at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected

misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for discharging the claimant. Since the employer did not participate at the hearing, the employer did not establish why the claimant was discharged for this isolated incident when her job had not been in jeopardy. The evidence does not establish that this isolated incident amounts to work-connected misconduct. As of October 20, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

DECISION:

The representative's November 13, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed work-connected misconduct. As of October 20, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs