

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACKENZIE RILEY
Claimant

APPEAL NO: 15A-UI-03220-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/01/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 17, 2015. The claimant did not provide a telephone where he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Dawn Walsh, Co-Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time overnight inventory management support worker for Wal-Mart from October 1, 2013 to February 3, 2015. He was discharged for violating the employer's safe work practices policy and reaching his final step on the employer's progressive disciplinary policy.

On February 1, 2015, asset protection associates were reviewing video surveillance footage regarding another issue and observed the claimant pushing an L-cart full of merchandise in front of him rather than pulling it behind him as was the safety rule. Additionally, the claimant was running while pushing the cart in front of him in the grocery receiving area. As he was running with the cart full of merchandise in front of him the cart hit a corner of the wall causing the cart to hit a bin, knocking it over. The cart also pushed the claimant into the wall and hit him in the face. The claimant completed an incident report because when the cart hit him in the face it struck his glasses and caused a small cut that bled. The incident report did not mention that the claimant was running or misusing the cart and consequently the employer did not believe further investigation was warranted until asset protection viewed the video surveillance February 1, 2015. The employer met with the claimant February 3, 2015, and notified him his employment

was terminated. The claimant admitted that he was running and pushing the cart instead of walking and pulling it and stated he used poor judgment.

The employer uses a progressive disciplinary policy where employees are allowed three written warnings prior to termination. Warnings drop off after one year. The claimant received his third written warning February 26, 2014, for job performance issues. Because his third written warning had not dropped off yet, the employer took the next step in its disciplinary policy which was termination of the claimant's employment, rather than issuing another form of disciplinary action.

The claimant has not made a weekly claim for benefits since filing for unemployment effective February 15, 2015, and has not received unemployment insurance benefits since he filed his claim. Consequently, there is no overpayment of benefits involved in this matter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts of omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was violating the employer's safe work practices January 15, 2015, when he ran with the cart in front of him instead of walking and pulling it behind him and hit a wall, overturning the cart and getting hit in the face in the process. His actions could have caused serious injury to a co-worker and as it was he did injure himself. He then falsified the incident report by failing to report the actual events that occurred that night. The claimant had received three previous written warnings and the third written warning was still in effect at the time of the final incident which resulted in the claimant's termination of employment.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The March 2, 2015, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has not received benefits since his separation from this employer. Consequently, there is no overpayment of benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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