

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIK BEIWEL
Claimant

WALMART INC
Employer

APPEAL 19A-UI-04982-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/26/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 14, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 18, 2019. Claimant participated. Employer participated through assistant store manager Brandon Woodward and assistant manager/asset protection manager Sheila Pyle. Claimant's Exhibits A through C were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in May 2017. Claimant last worked as a part-time lawn and garden associate. Claimant was separated from employment on May 28, 2019, when he was terminated.

Employer has a policy stating that the customer is the number one priority. Claimant was aware of the policy.

One of claimant's job duties as a lawn and garden associate was to assist customers in loading purchased product into their vehicles. Claimant was aware of this job duty.

On May 4, 2019, manager Brandon Woodward gave claimant his annual performance evaluation. Woodward ranked claimant's customer service as "Needs Improvement."

On May 8, 2019, employer gave claimant a written warning for repeatedly leaving the register unattended and because of his poor treatment of customers, associates, and supervisors. He was warned that further issues could lead to termination.

About a week later, claimant was helping a customer with a hose. Claimant informed the customer over the phone that the store had a specific hose in stock. When the customer arrived at the store, the customer realized the hose was the correct type but the wrong diameter. The customer was unhappy. When claimant was walking away from the customer, he said, "A hose is a hose is a hose." Another customer heard the comment and reported it to a manager. The customer in question later complained as well. Woodward verbally counseled claimant about the comment.

A few days later, claimant was disposing of dead ferns and spoke to asset protection manager Sheila Pyle about employer's new policy relating to the disposal of dead plants. Claimant made a derogatory comment about the new policy. Pyle reported the comment to a store manager.

On May 25, 2019, claimant was working in the lawn and garden center. A customer purchased several bags of mulch. Claimant was working at the register. Claimant was not allowed to leave the register unattended and there were no other employees present in the lawn and garden center. The customer asked claimant for help loading the mulch into her vehicle. Claimant tried to contact an employee for assistance on his walkie-talkie, but no one could hear him. Although the register has a landline telephone available, claimant did not attempt to call a manager or other employee for help. Instead, claimant told the customer that if she came before 5:00 p.m., he could help her, but since it was later there was no one available to help her. The customer loaded the mulch herself. When the customer got home, she called the store and complained about the interaction to a manager.

At first, Woodward was going to issue claimant a written warning for the most recent issues, but when he submitted the proposed written warning to the corporate human resource office, he was given the directive to terminate claimant's employment.

On May 28, 2019, Woodward and another manager questioned claimant about why he did not seek assistance via phone to help the customer load the mulch into her vehicle. Claimant could not give a straight answer. Employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer has presented credible evidence that claimant treated a customer and asset protection manager poorly after having been warned. This is disqualifying misconduct.

DECISION:

The June 14, 2019, (reference 01) unemployment insurance decision is affirmed. 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.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn