

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**GAVIN L CLARK**  
Claimant

**APPEAL NO: 18A-UI-11586-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 11/04/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 27, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 13, 2018. The claimant participated in the hearing. The employer provided a phone number where its witness could be reached but the administrative law judge called that number four times and did not receive an answer so the employer did not participate in the hearing.

**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 auto technician for WalMart, Inc. from September 9, 2013 to November 9, 2018. He was discharged for work performance, a charge the claimant denies.

The claimant was on a medical leave of absence and on July 1, 2018, shortly after he returned, he received a written warning for leaving an access door off during an oil change on a Chrysler 200 June 28, 2018.

The claimant was on another medical leave of absence until October 10, 2018. On October 19, 2018, the claimant received a written warning after a sensor broke inside a tire and the tire “jumped off the machine.” The claimant indicated on the warning that the tire machine was giving all employees problems but the employer was not interested in his explanation. The claimant signed the warning after commenting on the situation in the space provided for that purpose on the warning. On October 28, 2018, the claimant received a written warning after the manager accused him of using profanity in front of customers, a charge the claimant denies. The shop manager called the claimant into the office and yelled and swore at him and stated the claimant was never going to amount to anything. The claimant commented on the warning and signed it but took the issue to higher management where he indicated he strongly disagreed with the warning, felt that the shop manager was retaliating against him for his comments on the

previous warning and that his confidentiality was violated because everyone in the shop knew about the claimant's warnings, as they were not kept confidential.

On November 9, 2018, the claimant was called into the office and his employment was terminated. The employer stated on October 31, 2018, the claimant handed a customer his keys and the customer left without paying for the services the employer provided. The employer stated it had the incident on video but refused to show the video to the claimant when the claimant asked to see it. The claimant did not work October 31, 2018, as he was not scheduled that day and denies that he gave the customer the keys without taking payment for the services provided.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The November 27, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn