

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL M NOST

Claimant

APPEAL NO: 11A-UI-07074-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/24/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's May 16, 2011 decision (reference 01) that concluded April M. Nost (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 22, 2011. The claimant participated in the hearing. Brittany Balzen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 25, 2008. She worked part-time (approximately 33 hours per week) as a cashier at the employer's Cedar Rapids, Iowa store. Her last day of work was April 25, 2011. The employer discharged her on that date. The reason asserted for the discharge was selling alcohol to a minor and not checking the customer's identification.

There was a transaction on the claimant's register at about 5:44 p.m. on April 23. The sale included a six-pack of beer. The adult mother was with the younger customer at the start of the transaction, loading items onto the counter, and then left the register area, giving her daughter the cards to make payment before leaving. The employer believes the daughter was approximately 17, but did not provide verification as to the daughter's actual age. The employer asserted that the claimant processed the sale, including the beer, and did not ask for the daughter's identification, but rather entered her own birth date into the register.

When the claimant next came into to work on April 25, she was told she was being discharged for the transaction. She did not remember any transaction as that described, and requested to see the video surveillance which the employer indicated showed that it was the claimant on the register processing that specific transaction. However, the employer declined to allow the

claimant to see the video. As of the hearing, the claimant still had no recollection of any transaction such as that described, but indicated that April 23, the day before Easter, had been a very busy and hectic day on the register. There was no prior record of discipline against the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her processing the sale of the alcohol without checking the younger customer's identification and entering her own birth date into the register. The administrative law judge notes that the employer substantially deprived the claimant of an ability to seek to explain or defend herself by declining to allow the claimant to see the video it relies upon. Assuming that it was in fact the claimant who processed the transaction, under the circumstances of this case, including the presence of the adult mother at the beginning of the transaction and the lack of any prior discipline, the claimant's handling of the transaction was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 16, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw