

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA Y KIRCHNER**

Claimant

**APPEAL NO: 10A-UI-13136-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 07/25/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 10, 2010, reference 01, that held the claimant was not discharged for misconduct on July 28, 2010, and benefits are allowed. A telephone hearing was held on November 2, 2010. The claimant participated. Eric Watson, Assistant Manager, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on November 12, 2008, and last worked for the employer as a part-time cashier on July 26, 2010. The employer issued a discount card to claimant to use at employer stores. The policy limits the use to the employee, spouse and dependent children.

A Missouri employer store reported to claimant's store that it observed claimant using her employee discount card while other persons made payment for the items on July 15 & 16. The employer confronted the claimant about her discount card use. The claimant admitted she used the card, but she did not have money to purchase the items intended for her, and had some family members do so. The employer discharged the claimant for misuse of its employee discount card policy on July 28.

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

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.

871 IAC 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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on July 28, 2010.

The employer discharged the claimant for an isolated incident without any prior warning for the policy violation. The claimant considered using the discount card was acceptable, because the items purchased were intended for her. The employer failed to offer the policy as evidence to establish what the claimant did constitutes a clear violation.

**DECISION:**

The department decision dated September 10, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on July 28, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs