

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAMERON M WILSON**  
Claimant

**APPEAL NO. 17A-UI-08577-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 07/23/17**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cameron Wilson (claimant) appealed a representative's August 17, 2017, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 8, 2017. The claimant participated personally. The employer notified the appeals bureau prior to the hearing that it would not be participating in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 1, 2014, as a full-time customer appreciation process team two person. The claimant signed for receipt of the employer's handbook on November 1, 2014. The employer did not issue the claimant any warnings during his employment.

On or about June 14, 2017, the employer questioned the claimant about an allegation of the claimant touching a co-worker on two occasions. The claimant admitted that in 2015, the claimant and a co-worker had just clocked out and the co-worker did not have a ride home. The claimant offered him \$20.00 for transportation. The coworker would not take the money. The claimant put the \$20.00 in his front pocket.

The claimant also admitted he was working with the same co-worker in April or May of 2017, pushing freight down the line. The claimant had too much adrenaline, let out a yell and slapped the co-worker on the buttocks.

After the questioning and the claimant's admissions on June 14, 2017, the claimant continued to work until July 14, 2017. On July 14, 2017, the employer terminated the claimant for inappropriate touching on two occasions.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer was learned of on June 14, 2017. The claimant was not discharged until July 14, 2017. The employer has failed to provide any

evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's August 17, 2017, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs