

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAROL WHITESELL
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-09208-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/28/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Carol Whitesell, the claimant/appellant, filed an appeal from the March 23, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 16, 2021. Ms. Whitesell participated and testified. The employer participated through Brianna Wagner, asset protection assistance store manager.

ISSUE:

Was Ms. Whitesell discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Whitesell began working for the employer on March 14, 2000. By the end of her employment, Ms. Whitesell worked as a full-time cashier. The employer terminated Ms. Whitesell's employment on March 1, 2021

The employer's policy provides that no employee shall sell any alcohol to underage people, or otherwise be in violation of the policy or applicable Federal, state, or local law or regulation. The policy requires employees to verify the age of customers seeking to buy alcohol who appear age 40 or younger. The policy provides that violations of the policy could result in disciplinary action up to and including termination. Ms. Whitesell was aware of the policy.

On, or about February 27, 2021, unbeknownst to Ms. Whitesell, a person hired by the employer came through her cashier line to do an ID check. An ID check is when the person hired by the employer attempts to buy alcohol to test employees' compliance with the employer's policy. The employer conducts random ID checks. That day, the person placed alcohol on the counter. Ms. Whitesell asked the person for ID. The person responded that they have forgotten their ID in their car. Ms. Whitesell turned to the cash register to continue the transaction. Before she could finish the transaction, the person handed Ms. Whitesell a card telling her that the person was doing an ID check. Ms. Whitesell did not sell the person alcohol.

On March 1, the employer asked Ms. Whitesell what happened. Ms. Whitesell told the employer that she asked the person for their ID, the person said they left their ID in the car, she was going to proceed with the sale but she did not sell alcohol to the person because the person gave her the card. The employer terminated Ms. Whitesell's employment that day. Ms. Whitesell had no prior disciplinary record.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, Ms. Whitesell did not violate the employer’s policy. The policy prohibits employees from *selling* alcohol to underage persons and requires employees to ID any customer wishing to buy alcohol beverages who reasonably appear to be under the age of 40 years. It is undisputed that Ms. Whitesell did ask the person connected to the employer who was doing the ID check for an ID. It is also undisputed that Ms. Whitesell did not, in fact, sell alcohol to the person. While the employer may have been dissatisfied with Ms. Whitesell’s actions regarding the interaction with the person, Ms. Whitesell did not violate its policy. The employer has failed to meet its burden to establish misconduct. Benefits are allowed.

DECISION:

The March 23, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Whitesell was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

June 30, 2021
Decision Dated and Mailed

dz/lj