

by Wal-Mart Stores, Inc. from July 14, 2004 until he was discharged on September 2, 2005. The final incident leading to his discharge occurred on August 30, 2005. Mr. Edaburn and his roommate, Justin A. Fields, were in the process of leasing a new apartment. Mr. Edaburn had given Mr. Fields cash to put into Mr. Fields' checking account for paying the deposit. The deposit was less than anticipated. With Mr. Fields present, Mr. Edaburn purchased items such as a clock, bed pillows, batteries and a light. Mr. Fields wrote a check for the purchase with funds provided by Mr. Edaburn.

During the investigation of the incident, Mr. Edaburn told the assistant manager, not the same person as the witness in the hearing, of the circumstances of the purchase. The assistant manager related that information to the manager, not the manager who testified at the hearing, who indicated that Mr. Edaburn should be discharged in any event.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Mr. Edaburn was discharged for misconduct in connection with his employment. It does not.

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. See Iowa Code section 96.6-2. Although the employer provided useful documents, neither the assistant manager who conducted the investigation nor the manager who made the ultimate decision to discharge was called as a witness. Neither Mr. Lee nor Mr. Bickford had information to refute Mr. Edaburn's description of the transaction. Nothing in the employer's documentation would have put an employee on notice that the transaction as detailed in the Findings of Fact would result in discharge.

The administrative law judge concludes that the claimant acted in good faith without the intent to harm the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 28, 2005, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kkf/kjw