

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAIGE E TADLOCK
Claimant

APPEAL NO. 08A-UI-02558-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 02/1708 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Paige E. Tadlock (claimant) appealed a representative's March 11, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31 2008. The claimant participated in the hearing. David Patchim, an assistant manager, 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 12, 2003. The claimant worked as a full-time cashier. When the claimant started working, she received a copy of the employer's policies. One policy informed the claimant that only immediate members of her family could use her employee discount card. Also, when an employee receives four written warnings or coachings in a year, the employer may discharge the employee. (The warnings can be for different problems.)

During the course of her employment, the claimant allowed her son and his longtime girlfriend, who are not her dependents, to use her employee discount card. Prior to February 14, 2008, no one told the claimant that her son and his girlfriend could not use her employee discount card.

On February 14, the claimant's son was working but allowed his girlfriend to use the claimant's employee discount card. The claimant was working, but did not check out the merchandise purchased on her employee discount card. The employer's computer system alerted the employer that the claimant's employee discount card was used while she was working. The employer then learned the claimant allowed her son to use her employee discount card. The claimant allowed her son and the mother of her yet to be born grandchild to use her discount

card because she considered them her immediate family. After the employer reviewed its policy, the claimant learned for the first time that only dependent children were allowed to use her employee discount card.

Since the claimant had received written warnings on July 17, October 18 and December 18 for other issues and the employee discount card infraction would be her fourth written warning in a year, the employer discharged the claimant on February 18, 2008. In 2005, the claimant had four written warnings in a year, but the employer gave her another chance and did not discharge her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In accordance with the employer's policy about terminating employment when an employee has four written warnings in a year, the employer established business reasons for discharging the claimant. The facts, however, show that the claimant did not intentionally violate the employer's policy regarding the use of her employee discount card. The claimant sincerely believed her adult son and the mother of her upcoming grandchild were immediate family members and eligible to use her employee discount card. The record indicates that even management did not know or understand the dependent children policy. The claimant did not commit a current act of work-connected misconduct. Therefore, as of February 17, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 11, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive

benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css