

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER S JANSSEN

Claimant

APPEAL NO: 10A-UI-00425-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 12/06/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's December 29, 2009 decision (reference 01) that concluded Jennifer S. Janssen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 28, 2010. The claimant participated in the hearing. Chad Bennett 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 21, 2001. She worked full time as a center section team leader in the employer's Sioux City, Iowa store. Her last day of work was December 3, 2009. The employer discharged her on that date. The reason asserted for the discharge was a payroll integrity issue, a belief that the claimant had falsified her time record.

On November 30 the claimant was scheduled for a shift to begin at 7:00 a.m. She arrived into the parking lot at approximately 7:08 a.m. She entered the store, went past the time clock area, and went into the locker area. She came out a short time later and went to the time clock, swiping her badge at 7:12 a.m. She then made a time adjustment to show a start time of 7:03 a.m.

The claimant had gone to the locker room first because she had misplaced her badge and needed to retrieve an extra badge from her locker, which was an acceptable practice. Doing an adjustment then to reflect the actual time she entered the store would also have been acceptable. When she entered the time as 7:03 a.m., she picked that time as an estimate, knowing that she had been at least a few minutes late. The time that should have been entered would have been about 7:09 a.m. If she had entered that time, she may have received an

incident of an unexcused late report, but this would not have triggered any disciplinary action against her; there was no pending attendance issue regarding the claimant.

The employer concluded that the claimant had intentionally entered false information on the system, and so discharged her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that the entry of the incorrect start time information on the system was intentional falsification. Misconduct connotes intent. Huntoon, supra. The administrative law judge is not satisfied that the employer has shown intent on the part of the claimant; there has not been a showing of any motivation on the part of the claimant. The erroneous entry was not to avoid disciplinary action, and the few cents difference in wage that would have resulted from about six minutes in paid time would not appear to establish motive in the absence of a showing that this was part of a pattern of "hedging" time. Under the circumstances of this case, the claimant's approximate six-minute error in entering the proper time was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While the employer was acting within its discretion to discharge the claimant for the incident, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 29, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs