

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LISA L RUIZ**  
Claimant

**WALMART INC**  
Employer

**APPEAL 22A-UI-01266-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/07/21  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Code § 96.5(1) - Voluntary Quitting  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview  
Iowa Admin. Code r. 871-24.32(8) - Current Act

**STATEMENT OF THE CASE:**

Employer/appellant, Walmart, Inc., filed an appeal from the December 3, 2021, (reference 01) unemployment insurance decision that allowed benefits as the record did not show misconduct regarding the 11/09/21 work separation. After proper notice, a telephone hearing was conducted on February 4, 2022. Claimant/respondent, Lisa Ruiz, did not participate. Employer participated through Devin Collins, senior management with Walmart unemployment services and party representative and Abbi Andersen, asset protection coach. Judicial notice was taken of the administrative records. Employer's Exhibits 1-5 were admitted.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or a voluntarily quit without good cause?  
Was claimant overpaid benefits, and if so, should claimant repay the benefits?  
Should the employer's account be charged?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence and record, the undersigned finds:

Claimant started with employer on January 10, 2015. Claimant's last day worked was November 9, 2021. Claimant was a full-time deli/bakery team associate with a varied schedule. Claimant was told she was fired from employment on November 9, 2021, for violation of workplace rules on discrimination/harassment for sending a text about a co-worker. Employer treats the separation date as November 12, 2021. See Employer Exhibit 1.

Employer has an employee handbook that was provided to claimant on their first day of work. Part of the handbook is a policy regarding Discrimination and Harassment Prevention. See Employer Exhibit 3.

October 5, 2021, employer received a complaint via the ethics line that claimant made a comment regarding the sexual orientation of a co-worker in violation of the company rules. Employer interviewed three individuals, two on October 7 and one on October 8. One of the witnesses provided a picture of the text claimant sent, as claimant had left her phone open and this is how the witness learned of the text. See Employer Exhibit 5.

Claimant denies making any comments regarding the sexual orientation of a co-worker. Claimant asserts the text was not about any of her co-workers but admits to sending the text. The text was sent to two of claimant's fellow co-workers. The findings were sent to the store manager on October 8, 2021. It is unknown when the store manager sent the information to the home ethics office for their decision, but it would have been done by October 19, 2021. The employer does not know how long home ethics had the matter to review or when they would have provided their decision to terminate claimant. Once employer received the home ethics office decision to terminate, employer would have looked at the schedule to see when claimant was next in to work and would have scheduled a meeting for that date. That meeting took place on November 9, 2021.

December 15, 2020, claimant was provided coaching for the same type of issue regarding comments in violation of the policy on Discrimination and Harassment Prevention. Claimant then was given training on the topic on January 2, 2021. Claimant was aware of the rule and knew her job was in jeopardy.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant 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.

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.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

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.

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.

Employer has failed to meet their burden of proof. The last act asserted was a September 24, 2021 text, that employer became aware of on October 5, 2021, but the termination was not until November 9, 2021. The separation date is 35 days after employer gained knowledge and 46 days after the last act. While an employer can have time to investigate matters and determine a course of action, that time must be reasonable. Here, employer has failed to establish the time taken was reasonable. Employer did not know particularly when the investigation went from one phase to the next, nor why each phase took as long as it did. Employer did not testify as to whether the time involved was typical or not of an investigation. Employer was not able to say how much time lagged in the manager's receipt of the investigation and forwarding it to the ethics office or what the manager may have done with the investigation, nor was able to say when employer was in receipt of the directive from the ethics office and the time frame from receipt to that directive being followed. The explanation provided has failed to establish a good cause

reason for the time taken from the date of knowledge of the incident to the date of discharge. This results in no current act from which claimant was discharged.

No current act was proven at or very near the date of separation to warrant employer discharging claimant. While the employer may have had good reasons to let claimant go, there was no disqualifying reason proven and no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

Because claimant is allowed benefits, the issues of overpayment and employer's relief of charges are moot and will not be further addressed.

**DECISION:**

The December 3, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. Claimant is allowed benefits, provided claimant is otherwise eligible. This makes the issues of overpayment and employer's relief of charges moot.



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Darrin T. Hamilton  
Administrative Law Judge

April 1, 2022  
Decision Dated and Mailed

dh/scn