

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

QAADIR M BEA
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 17A-UI-04045-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/19/17
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 6, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 5, 2017. Claimant participated personally. Employer participated by Cindy Hammer. Employer's exhibits 1-5 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 19, 2017. Employer discharged claimant on February 19, 2017 because claimant found a wallet that a customer had dropped and took money from the wallet before returning the wallet to the store.

In the early morning hours of February 17, 2017 Cindy Hammer, an overnight assistant manager for employer, cashed a check for a customer for over \$300.00. The customer then bought a small amount of goods from Wal Mart and left the store. The customer was then observed pushing his cart back into the store, and customer's wallet fell out of the cart. A short time later, claimant, who was riding on a piece of equipment scrubbing the floor, saw the wallet, picked it up, and opened the wallet. Video evidence showed these actions by claimant. Claimant stated that the wallet was empty, and he was busy at the time so he did not immediately turn the wallet in to customer service.

Ms. Hammer was contacted by the customer soon after the wallet was lost. She then searched through company videos to see if she could find out what happened to the wallet. She saw the customer drop the wallet and claimant pick it up. Shortly before the wallet was dropped, Ms. Hammer saw the customer put almost \$300.00 into the wallet and leave the store.

At approximately 4am Ms. Hammer approached claimant to ask about the wallet. She stated that she'd seen video of claimant picking up the wallet. Claimant stated that he'd thrown the wallet behind the customer service area. Ms. Hammer went over to the customer service area

where claimant pointed out that he'd thrown the wallet. Ms. Hammer couldn't find the wallet, and stated that she'd go back to the video room to see if there was video showing the claimant throwing the wallet. After Ms. Hammer left the area, claimant behind the customer service desk, went out of the view of cameras, and held up the wallet. Claimant stated that the wallet had fallen through a small gap by a desk and he found it on the ground. When Ms. Hammer later went to look through video of the customer service area throughout the time in question, she did not ever see the claimant throwing a wallet in the area.

Ms. Hammer stated that claimant told her on the night of the incident, prior to claimant finding the wallet, that claimant stated he'd spoken with the claimant, who'd returned to the store. Claimant denied that he said that and denied that he spoke with the claimant that night.

Claimant did state that the person who lost their wallet came by his home and threatened claimant's family. Claimant stated that this was the reason that he wrote a voluntary statement stating that he'd taken the money out of the wallet. After claimant wrote a voluntary statement admitting this, employer terminated claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 § 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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct 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. Rule 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 Ct. 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning theft of money from a customer's wallet.

The last incident, which brought about the discharge, constitutes misconduct because claimant's story as to throwing the wallet, then finding the wallet himself immediately after Ms. Hammer had searched for the wallet is not credible. In order for claimant's testimony to be correct, a customer must have taken money out of his own wallet, then intentionally dropped the wallet planning that an employee would pick it up so the customer could demand a return of the money that wasn't in the wallet to begin with. This is not credible. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 6, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn