

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE M BAUER

Claimant

APPEAL NO. 08A-UI-04976-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 04/27/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's May 16, 2008 decision (reference 01) that concluded Connie M. Bauer (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2008. The claimant participated in the hearing. Kathy Kintigh, the store manager, and Sheryl McKeivitt 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 July 7, 2005. She worked as a full-time greeter in the TLE department (tire and lube department). Prior to April 24, 2008, the claimant's job was not in jeopardy.

On April 24, the employer was short a technician for the 5:00 to 9:00 p.m. shift. A salaried manager first talked to the claimant and told her she could leave work early or she could work with the TLE technician. If the claimant worked with the TLE technician, the sales associate would take over the greeter job duties that night. The claimant agreed to work with the TLE technician, Elaine.

When the salaried manager talked to Elaine about the claimant working with her that night, the claimant understood Elaine did not want to work with her because the claimant was not a certified technician and would not be able to help if Elaine became very busy. Elaine chose to clean up the shop and leave work at 5:00 p.m. instead of working with the claimant. The claimant understood the salaried manager would talk to the store manager about the employees leaving work early and get back to Elaine and the claimant.

Elaine and the claimant started cleaning up the shop and left at 5:00 p.m. The salaried manager contacted Kintigh who was certified to work as a TLE technician. The salaried manager did not notify the claimant or Elaine that Kintigh would help Elaine. When Kintigh went to the TLE department shortly after 5:00 p.m., the lights were turned off and no one was working. The employer, however, had customers waiting for work to be done by a TLE technician.

Kintigh reported the situation to her supervisor. Upper level management decided the claimant committed gross misconduct by leaving work early without proper authorization. On April 26, 2008, the employer discharged the claimant.

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).

Although the salaried manager gave the employer a different version of what she told the claimant and Elaine, this employee did not testify at the hearing. The claimant's testimony is credible and must be given more weight than the employer's reliance on unsupported hearsay information from an employee who did not testify at the hearing. Since the claimant was given the choice of working or going home and the TLE technician declined to work with the claimant, the claimant reasonably concluded she had authorization to leave work at 5:00 p.m. The claimant did not commit work-connected misconduct. As of April 27, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's May 16, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 27, 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