

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOMMY WEST**  
Claimant

**APPEAL NO: 09A-UI-16254-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 09-27-09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 22, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 3, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cart pusher for Wal-Mart from May 5, 2008 to September 25, 2009. Co-workers on the previous shift broke the “mule” machine that is used to gather and push the carts from the parking lot and the claimant was upset about the situation. A cashier was out in the parking lot and he talked to her about the mule being broken. He testified he said, “Damn. How did they break the god damned mule? These young-ass guys fucked up the machine.” He then complained about his schedule to the cashier stating he, “always gets the fucked up hours on Saturdays.” Customers in the parking lot overheard his comments and reported them to co-managers Andy and Shaun who met with the claimant. The claimant worked until 4:00 p.m. September 24, 2009, and then went out drinking with his son from approximately 10:00 p.m. until 3:00 a.m. or 4:00 a.m. He got up at 1:00 p.m. September 25, 2009, to be at work at 2:00 p.m. He was sweating in the parking lot and when he spoke to the co-managers they thought he had been drinking because he believes he was sweating the alcohol out from the night before out. He had received a verbal warning in the past for hitting a customer’s car with a cart. The employer terminated him for using profanity in front of customers and suspicion of being intoxicated at work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 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.

When speaking to the claimant about using profanity in the parking lot the co-managers smelled alcohol and believed he had been drinking. They did not send him for an alcohol test and the claimant's explanation that he was probably sweating the alcohol out from the night before is the only evidence presented regarding that issue and as such does not rise to the level of disqualifying job misconduct. The claimant did use profanity in front of customers in the parking lot, however, and the employer received complaints about his language. It was not an isolated word but several statements containing profanity when he was talking about the mule being broken and his Saturday schedule. The administrative law judge concludes the claimant's conduct with regard to the use of profanity in front of customers demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The claimant's actions rise to the level of disqualifying job misconduct. Therefore, benefits are denied.

**DECISION:**

The October 22, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/css