

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TAMMIE C ACKELSON**  
Claimant

**WALMART INC**  
Employer

**APPEAL 19A-UI-00203-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/09/18  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tammie Ackelson, Claimant, filed an appeal from the December 31, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Walmart, Inc. due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on January 24, 2019 at 9:00 a.m. Claimant participated. Employer registered to participate but was not available at the registered telephone number at the time of the hearing. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a cashier from July 27, 2018 until her employment with Walmart, Inc. ended on December 1, 2018.

On December 1, 2018, claimant sold a tobacco product to a customer after checking the customer's identification and noting the customer's date of birth was September 4, 2000. Claimant believed the customer was of legal age to purchase tobacco products. After completing the sale, claimant was told by an undercover police officer that she had sold tobacco to a minor. Claimant asked to see the identification again to confirm the date of birth, but was refused. Claimant was given a ticket and assessed a fine by law enforcement. Employer then met with claimant and terminated her employment. Employer did not give claimant a reason; claimant assumes she was terminated for selling tobacco to a minor.

Employer has a system for the sale of tobacco to a customer. A cashier is prompted by the cash register to answer whether the customer looks under the age of 40 years old. If the cashier responds that the customer looks under the age of 40 years old, the cash register prompts the cashier to enter the customer's date of birth. However, the cashier can bypass entering the customer's date of birth. Claimant received training on the sale of tobacco.

Employer's policy is that discipline may be up to and including termination. Claimant had no prior warnings for selling tobacco to minors.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Further, 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). 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. 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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Negligence does not constitute misconduct unless recurrent in nature; a single act is not

disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Claimant reasonably believed that she sold tobacco to a customer over the age of eighteen years and in compliance with the applicable law. Claimant reviewed the customer's identification and noted the birthdate. Claimant did not deliberately disregard the employer's interests. Claimant had no prior warnings for selling tobacco to a minor; therefore, it was not a recurrent act of negligence. Employer has not met its burden of providing disqualifying, job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The December 31, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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