

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARON M ERB
Claimant

WALMART INC
Employer

APPEAL 21A-UI-23583-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/12/21
Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 14, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon a voluntary quitting of work. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2021. The claimant participated personally. The employer participated through witness Julianna Poppe. Both parties waived due notice of the issues of whether the claimant was able to and available for work under Iowa Code § 96.4(3). The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a night stocker. Claimant began her employment in July of 2020. On September 12, 2021, the claimant tendered a written letter to the employer stating she was going to be quitting her position and that her last day was to be September 23, 2021. On September 17, 2021, the claimant was discharged from employment because Ms. Poppe believed she was standing around talking to other co-workers and not performing her job duties. Claimant was performing her job duties on September 17, 2021.

Claimant's administrative records establish that she filed her initial claim for unemployment insurance benefits effective September 12, 2021. The week of September 12, 2021 through September 18, 2021, she worked 39.5 hours of her regularly scheduled work week. She also earned gross wages in excess of her weekly-benefit amount, plus \$15.00. For the week-ending September 25, 2021, the claimant was able to and available for work. No further weekly continued claims have been filed to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). In this case, the claimant engaged in no final incident of job-related substantial misconduct that would disqualify her from receiving unemployment insurance benefits. As such, the separation from employment is not disqualifying. However, in order to remain eligible for unemployment insurance benefits funded by the State of Iowa, the claimant must establish that she was able to and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

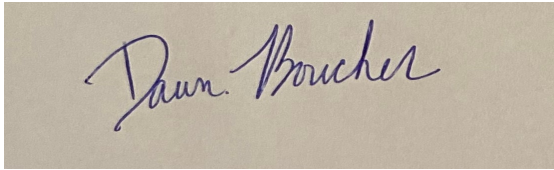
In this case, the claimant worked to such a degree that removed her from the labor market for the one-week period ending September 18, 2021. She also earned wages in excess of her weekly-benefit amount, plus \$15.00 during the week-ending September 18, 2021. As such, benefits are denied effective September 12, 2021 through September 18, 2021.

For the week beginning September 19, 2021, the claimant has established that she was able to and available for work. The separation from employment was not disqualifying. As such, benefits are allowed effective September 19, 2021, provided the claimant remained otherwise eligible.

DECISION:

The October 14, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant. Claimant was discharged from employment for no disqualifying reason and the separation from employment is not disqualifying. However, unemployment insurance benefits funded by the State of Iowa are denied for the one-week period beginning September 12, 2021 and ending September 18, 2021 pursuant to Iowa Code §96.4(3) as the claimant was not considered able to and available for work due to working to such a degree that removed her from the labor market.

Benefits are allowed effective September 19, 2021, as the claimant established that she was able to and available for work.



Dawn Boucher
Administrative Law Judge

December 22, 2021
Decision Dated and Mailed

db/db