

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN BOLDEN
Claimant

APPEAL NO. 18A-UI-08314-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 06/24/18
Claimant: Respondent (1)

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 26, 2018, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on June 27, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on August 24, 2018. Claimant Kevin Bolden did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Zondra Wilburn represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 10 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Bolden was employed by Walmart, Inc. as a full-time Money Center Associate until June 27, 2018, when Assistant Manager Zondra Wilburn discharged him from the employment for money handling errors and for exceeding the number of allowable reprimands during a rolling 12-month period. Mr. Bolden's duties involved cashing customer paychecks, facilitating electronic Money Gram funds transfers and issuing money orders. The transactions Mr. Bolden handled often involved large sums of money. Mr. Bolden's immediate supervisor was whichever customer service manager was on duty during his shift. Ms. Wilburn was above the customer service managers in the store hierarchy and served as Mr. Bolden's supervisor for purposes of issuing discipline.

The final incident that triggered the discharge occurred on June 12, 2018. On that day, Mr. Bolden erroneously received \$1,000.00 less cash from a customer than he was supposed to receive for an \$8,009.99 Money Gram electronic funds transfer. Mr. Bolden and other Money Center Associates worked from the same register. The variance came to the employer's attention on June 13, 2018. The employer then researched the transactions from the June 12 business day to determine which transaction and which Money Center Associate was responsible for the shortage. The employer's research included reviewing surveillance video. Ms. Wilburn is unable to say when the employer concluded its investigation of the matter. The employer first spoke to Mr. Bolden about the matter on June 27, 2018, at which time Ms. Wilburn notified Mr. Bolden that he was discharged from the employment. Ms. Wilburn was unable to provide the date of the next most recent conduct that factored in the discharge. That incident concerned Mr. Bolden's refusal to look up some phone numbers for a customer and resulted in discipline that was issued in September 2017.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Administrative Code rule 871-24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record established a discharge that was not based on a current act. The conduct that triggered the discharge occurred on June 12, 2018 and came to the employer's attention the following day. The employer did not speak with Mr. Bolden about the incident until 15 days later on June 27, 2018. The employer was unable to state when the employer's investigation of the matter concluded. The employer failed to prove a reasonable basis for the delay between the employer's knowledge of the error and broaching the matter with Mr. Bolden.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bolden was discharged for no disqualifying reason. Accordingly, Mr. Bolden is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 26, 2018, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn