

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A KANE**

Claimant

**APPEAL NO: 14A-UI-03727-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 03/09/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 31, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge. The claimant participated at the June 16 hearing with her attorney, A. Zane Blessum. The employer did not participate at the hearing in Creston, Iowa. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in September 2013. The employer hired her as a full-time cashier, but the claimant only worked an average of 20 to 30 hours a week.

The claimant's last day of work was February 10, 2014. Her fiancé was hospitalized February 11 through 24. The claimant called in to report she was unable to work February 11 through 20. Her fiancé was not doing well and she spent time at the hospital with him.

On February 20, the claimant told the employer she was ready to return to work. The claimant asked if she could be scheduled every other day so she could still go to the hospital on days she was not scheduled to work. The employer did not make this accommodation. The claimant also requested a leave of absence under FMLA. Since the claimant had not worked long enough for the employer, she was not eligible for FMLA. Instead of scheduling the claimant to work, the employer did not schedule the claimant to work any hours. Even though the claimant wanted to return to work, she understood her employment ended in early March 2014.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting

work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts show the claimant asked to be put back on the schedule on February 20, 2014. Even though the claimant asked about FMLA, she still asked the employer to put her back on the schedule. The facts do not establish that the claimant voluntarily quit her employment. In this case, the employer initiated the employment separation when the employer did not schedule the claimant to work after February 20, 2014.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for ending the claimant's employment. Since the employer did not participate at the hearing, the employer did not establish that the claimant committed work-connected misconduct. As of March 9, 2014, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's March 31, 2014 determination (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer ended the claimant's employment in early March by failing to schedule her to work even though the claimant asked to work. The employer discharged the claimant for reasons that do not establish work-connected misconduct. As of March 9, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to a maximum of \$18.36 in charges during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/can