

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY GENGLER
Claimant

APPEAL NO. 13A-UI-02779-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 2/10/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated March 6, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 10, 2013. Claimant participated personally. Employer participated by Store Manager, Kevin Mehaffey.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant began employment for Wal-Mart Stores as a full-time deli associate on February 9, 2012. She was discharged on February 9, 2013 by employer because of an allegation that she refused to follow reasonable work instructions.

On February 9, 2013, claimant was assigned to make sandwiches along with another employee. Claimant did not believe this was her job assignment. Nevertheless, claimant made what she deemed to be half of the sandwiches and then returned to her assignment. She worked faster than her co-worker and completed the sandwiches quicker. She was told to continue to help her co-worker complete the sandwich assignment and she had a dispute with her direct supervisor, Anita about whether this was fair.

Claimant's supervisor called a meeting with the Store Manager, Kevin Mehaffey, and Assistant Manager. The record is conflicted as to what happened at the meeting. The claimant was asked why she did not want to help and she told her superiors that she had already done half the sandwiches and it was the other employee's assignment. The employer told her that she needed to keep working on the assignment until it was complete. The claimant left the meeting and said she was going to go finish the croissants. The employer brought her back to the meeting and terminated her for her attitude.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the 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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination.

The fighting issue on appeal is whether the employer proved by a preponderance of evidence that the claimant intentionally refused a reasonable work directive. There is conflicting evidence on this point. Mr. Mehaffey testified that claimant was brought to a meeting where she continued to refuse to help the other deli associate complete the assignment of making sandwiches. Claimant testified that she did not.

Both parties provided testimony under oath subject to cross-examination. Both stories are equally plausible. The employer has the burden of proof. The employer presented no corroborating testimony such as contemporaneous documentation including the report of termination or testimony from the other individuals present. As such, the employer has failed to meet its burden of proof and claimant is eligible for benefits.

DECISION:

The fact-finding decision dated March 6, 2013, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs