

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDDIE J STAGE

Claimant

APPEAL NO. 10A-UI-16626-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 10/17/10

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 3, 2010 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with his witness, Kathryn Zimmerman, his girlfriend. Ashley Hockman, the human resource manager, and Denny Galles appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late May 2009. He worked part-time in the electronic department and also sold cellular phones. On November 12, 2009, the claimant received a Decision Day or a final written warning for leaving a bag of money unattended on top of a register. The claimant understood his job was in jeopardy for a year if he had any more infractions.

On October 23, 2010, as the claimant walked back to work from a break, Zimmerman asked him to call her when he was done working. At the time, the claimant was frustrated because the employer would not allow him to work selling cell phones as much as he wanted to do. The claimant told his girlfriend he would call her unless work drove him crazy and he went postal. An employee, M., was walking behind the claimant and his girlfriend, but the claimant was not talking to M. The claimant and M. did not get along. Although M. did not say anything to the claimant or his girlfriend, she reported the comment to the employer.

On October 23, 2010, the employer discharged the claimant for the comment he made about going postal, because this comment created a hostile work environment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even if M. found the claimant's comment offensive or it bothered her, the claimant did not make the comment to her. The claimant was talking to his girlfriend, not M., when he expressed some frustrations he had with work. Under these circumstances and without M. present to testify, the employer did not establish that the claimant committed work-connected misconduct. As of October 17, the claimant is qualified to receive benefits.

DECISION:

The representative's December 3, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 17, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw