IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AQUANDA JONES
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 17A-UI-04778-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/09/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's April 25, 2017, decision (reference 01) that concluded Aquanda Jones (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 23, 2017. The claimant participated personally. The employer participated by Jared Nelson, Assistant Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 1, 2014, as a full-time customer service manager. The employer's online employer's handbook is available to employees during work hours if they are allowed time to access the document on "the wire". The employer has computer based learning on Respect for the Individual but the claimant had not taken that module. The online handbook states there are three levels of written warning. If an employee receives three written warnings in a twelve-month period, she will be terminated. It also states that an employee will always receive a higher warning than the last one she received within the twelve months. The employer issued the claimant a first written warning on June 17, 2015, for having an abrupt tone. On September 29, 2015, the employer issued the claimant a second written warning for attendance issues. On May 20, 2016, the employer issued the claimant a third written warning when she accidentally lost a scanner. The employer notified the claimant each time that further infractions could result in termination from employment.

On April 3, 2017, the claimant was the only customer service manager or member of management working the front end of the store. She was very busy doing a number of tasks when a manager sent her a trainee who needed to observe financial transactions. The claimant took the trainee to a cashier so she could observe and the claimant continued with her tasks.

When the claimant returned, the trainee was gone. A manager called the claimant and asked her to handle the process personally. The claimant asked if it could wait because the area was extremely busy. The manager said it would only take five minutes. The claimant took the trainee through the process. She asked the trainee if she understood the process and if she had any questions. The trainee understood and had no questions.

On April 7, 2017, the trainee arrived at the front end thirty minutes late. The claimant helped her to get everything she needed to get started. The claimant's battery on her pager was dying and she needed to get a replacement. The trainee paged the claimant three times because the trainee forgot the cloth bag for coupons and other items. The claimant got the bag for the trainee. The claimant was so busy that day that she did not have her usual break and lunch time. Later, the manager called the claimant to the office and said the trainee reported the claimant as rude. The cashier complained that the claimant "had rudeness about her" on April 3 and 7, 2017. The employer terminated the claimant on April 7, 2017, because it had to issue her a higher level of warning. There is no warning higher than a third written warning.

The claimant filed for unemployment insurance benefits with an effective date of April 9, 2017. The employer participated personally at the fact finding interview on April 24, 2017, by Farah Smith.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.
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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The first issue is the employer's assertion that the claimant's warnings are calculated in a rolling twelve-month period but are cumulative past the twelve-month mark. This is confusing. In the claimant's case, she could receive her first warning on the day she was hired, her second warning on October 31, 2015, her third warning on October 30, 2016, and her termination on October 29, 2017. This is a period of three years. Warnings either fall off or are cumulative.

In this case, it appears the employer did not know the name of the trainee or anyone else who was working in the area during the time the claimant was rude. The employer did not provide first-hand testimony or written statements at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 25, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/scn