

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J BROWN
Claimant

APPEAL NO: 08A-UI-00179-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/09/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Matthew J. Brown (claimant) appealed a representative's December 27, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines on January 30, 2008. The claimant participated in the hearing with his father, Jim Brown. Stephanie Abshire, an assistant manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on December 6, 2006. Prior to his employment separation, the claimant worked full-time stocking carts and cleaning the parking lot. During his employment, the claimant received some written warnings. The claimant received a written Decision Day warning on March 4, 2007.

In early or mid-July 2007, the claimant talked to the store manager, Chad, about transferring to the Bethany, Missouri store. The claimant's father owns a home in Missouri and wanted to move there for health reasons. The claimant understood from Chad that his transfer to Missouri had been all arranged. Based on information from Chad, the claimant did not understand he needed to anything else to be transferred to the Missouri store. The claimant had no idea it was his responsibility to contact the store in Bethany and find out if he could transfer to that store.

The claimant relied on the store manager's position and assurance to transfer to the Bethany, Missouri store.

On July 23, 2007, the claimant went to work in jeans instead of khaki-colored shorts. The claimant's khaki shorts were dirty because the claimant cleaned the outside of the employer's facility and his father had not washed the shorts. (The claimant has a learning disability and relies on his father for many things.) An assistant manager, Josh, saw the claimant at work in jeans instead of shorts. Josh told the claimant to home to get his pants changed. When Chad saw the claimant that day, he told the claimant to go home. The claimant understood Chad did not want him to come back to work and had just discharged him.

On July 25, the claimant's father went to the store with the claimant when he brought his uniforms in. The claimant's father wanted to explain why the claimant had not worn shorts on July 23. After talking to personnel in the human resource department and Chad, Chad told the claimant and his father that the claimant had not been discharged. The claimant worked one more day for the employer, July 26, 2007. After working this one day, the claimant still understood Chad had made the necessary arrangements for him to transfer to the Bethany, Missouri store.

The claimant then went to Bethany, Missouri, and talked to personnel at the Bethany, Missouri store. Bethany employees had no knowledge the claimant wanted to be transferred to their store. The claimant then learned there were no job openings for him to transfer to. The claimant and his family stayed in Bethany for two days and then returned to Des Moines.

After returning to Des Moines, the claimant immediately contacted the employer and asked about returning to his job. The employer told the claimant there were no jobs, but he could apply in six months. Although the claimant's father attempted to talk to the district manager to resolve the situation with the claimant's employment, the district manager never returned Jim Brown's calls.

The employer did not complete the claimant's exit interview paperwork until August 9, 2007. This paperwork completed by the employer indicated the claimant quit to move to Missouri. The paperwork also indicates the claimant's transfer request had been denied because he had a written Decision Day on his record. (Employer Exhibit One.) Even though the claimant had a Decision Day on his employment record, Bethany, Missouri store still had the discretion to accept the claimant as an employee. (Employer Exhibit Two.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts establish that the claimant never intended to end his employment. The claimant wanted to transfer to the Bethany, Missouri store, but he did not want to end his employment relationship with the employer. The fact the claimant only stayed in Bethany two days, then returned when he did not have a job and asked the employer about returning to his job, supports the finding the claimant had no intention of quitting his employment.

The employer ultimately ended the employment relationship by misrepresenting the status of the claimant's transfer to the claimant or by failing to inform the claimant's father about the status of the claimant's transfer and then declined to give the claimant back his job in early

August. Since Chad did not participate in the hearing, the claimant's testimony is undisputed as to what happened and what Chad told him about his transfer.

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).

Since Chad did not appear to testify it is not known what steps, if any, he took to make it possible for the claimant to transfer. The evidence suggests Chad did not even contact the Bethany, Missouri store about transferring the claimant. The claimant's employment ended either because the employer misrepresented the status of the claimant's transfer or because the employer failed to help the claimant transfer. For unemployment insurance benefits, the employer's action resulted in the claimant's employment ending. The claimant did not commit work-connected misconduct. Therefore, as of December 9, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 27, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 9, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs