

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAMIA PALMER

Claimant

APPEAL NO. 10A-UI-17012-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 11/07/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 7, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 25, 2011. The claimant participated. The employer participated by Sonja Jarvis, assistant manager. The record consists of the testimony of Sonja Jarvis and the testimony of Shamia Palmer.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a part-time sales associate in the electronics department of the Wal-Mart store located in West Burlington, Iowa. The claimant was hired on January 27, 2010. Her last day of work was October 30, 2010. She was terminated on October 30, 2010.

The incident that led to the claimant's termination occurred on October 30, 2010. The employer has a written policy that prohibits the use of personal cell phones on the sales floor. This policy is contained on the first page of the written dress code, which is given to all employees during their orientation. The claimant was seen using her cell phone on the sales floor by an assistant manager on October 30, 2010. She was told to put the phone away. The claimant walked through the men's department and the infant's department and continued to use the phone. She was supposed to be responding to a call for assistance in the electronics department where she worked.

The claimant had been previously warned on multiple occasions, including the week preceding her termination, that she was not supposed to use her cell phone on the sales floor. The claimant had also received warnings for attendance. The claimant was at the end of the

disciplinary process and was terminated on October 30, 2010. At the time of her termination, she admitted that she had been using her cell phone on the sales floor.

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.

Misconduct that disqualifies an individual from receiving unemployment benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to establish work rules and can reasonably expect that employees will follow those rules. The employer has the burden of proof to establish misconduct.

The evidence in this case established that the claimant deliberately violated the employer's written policy on the use of personal cell phones on multiple occasions. Although the claimant said she did not know the employer's policy, this testimony is not credible. The employer's policy on cell phone usage was clear and unequivocal and is part of its written dress code. In addition, the claimant had been told on multiple occasions that she could not use her cell phone on the sales floor. The claimant admitted she was using her phone on October 30, 2010. She had been warned the previous week not to use the phone. The claimant knew the policy and deliberately chose to ignore that policy. Misconduct has been established. Benefits are denied.

DECISION:

The representative's decision dated December 7, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw