

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN A DETHLEFS
Claimant

APPEAL NO: 13A-UI-00165-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/09/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 31, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, Robert Pierson. Susan Zevin represented the employer. Greg Salamon, a co-manager, testified on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 September 2005. She worked as a full time cashier. The claimant understood that in accordance with the employer's alcohol policy, the employer required her to ask for the ID of any customer, who appeared under 40, to verify they were old enough to buy alcohol. To verify a customer was old enough to buy alcohol, the claimant had to enter the birth date in the cash register. If the customer was old enough, the cash register allowed the sale to go through. The employer's alcohol policy also informs employees that if an employee sells alcohol to a minor, they will be discharged.

On December 4, a customer with beer came to the claimant's cash register shortly before the end of the claimant's shift. The claimant had been very busy during her shift. She was tired. The claimant waited for the customer to give the claimant her ID. After she obtained the customer's ID, she glanced at it. The claimant then inadvertently hit the total button or the wrong button on the cash register, which allowed the transaction. When the cash register allowed the sale, the claimant sold the beer to an underage customer. The claimant did not realize at the time she had not entered the customer's birth date into the cash register. Local law enforcement officials cited the claimant for selling alcohol to a minor.

On December 5, when the employer talked to her about this violation, the claimant had not realized she made this mistake until then. Even though the claimant had not had any problems like this before and her job was not in jeopardy before this incident, the employer followed its alcohol policy and discharged the claimant on December 5, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

In accordance with its alcohol policy, the employer had no choice but to discharge the claimant. On December 4, the claimant did not intentionally violate the employer's policy. She obtained the minor's driver's license and through an oversight or negligence she hit the wrong button on the cash register. When the cash register allowed the sale to go through, the claimant did not realize she had not entered the birth date of the customer and inadvertently sold beer to a minor. While the employer was justified in discharging the claimant, she did not commit work-connected misconduct. Therefore, as of December 9, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 31, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. But, the claimant did not commit work-connected misconduct. As of December 9, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs