

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RODNEY A DEREUS
Claimant

WALMART INC
Employer

APPEAL NO. 21A-UI-23397-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/22/21
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 12, 2021, reference 01, decision that held the claimant was eligible for benefits, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on August 24, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on December 13, 2021. Claimant, Rodney Dereus, participated. James Curry represented the employer. The administrative law judge took official notice of the following Agency administrative records: DBRO, KFFV, and the deputy's notes concerning the employer's participation in the fact-finding interview.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Rodney Dereus, was employed by Walmart, Inc., doing business as Sam's Club, from 2018 until August 24, 2021, when the employer discharged the claimant from the employment. From March 2020 until the end of the employment, the claimant was the Club Manager for the Cedar Rapids Sam's Club. James Curry, Market Manager (district manager), was the claimant's immediate supervisor. As Club Manager, the claimant was responsible for all aspects of store operations. This included hiring, training, and providing direction and guidance to managers and hourly employees, resolving member complaints, and ensuring all operations conformed to company standards.

Mr. Curry made the decision to discharge the claimant from the employment and notified the claimant on August 24, 2021. Mr. Curry concluded the claimant had not demonstrated satisfactory improvement following an August 6, 2021 written reprimand. The August 6, 2021 written reprimand followed Mr. Curry's visit to the Cedar Rapids store on July 28, 2021. Mr. Curry identified multiple concerns in the reprimand. These including the claimant not

“touring” the club with the leadership team on a daily basis to ensure the club was clean and orderly, not conducting weekly meetings with the leadership staff, not holding the twice-daily front of house meeting with the hourly staff, not conducting appropriate one-on-one meetings with staff, and not adhering to the “open door protocol.” The reprimand also followed an hourly employee’s complaint to Mr. Curry regarding the claimant’s handling of a complaint the associate reported to Mr. Curry about the bakery lead and the prepared food lead falsifying time reports. Mr. Curry had discussed the matter with the claimant. The claimant investigated the matter. The claimant spoke with the complaining associate in a closed office and acknowledged the complaint to Mr. Curry. The associate subsequently contacted Mr. Curry and asserted she was uncomfortable because the claimant approached her to discuss the matter. Regarding the store tours, the claimant would walk the store with the leadership team approximately every other day, less frequent than Mr. Curry desired. The claimant attributes the reduced frequency to staffing issues. Though the claimant understood communication notes were to be entered into a software application during and in connection with the tour, the claimant did not consistently enter notes in the software application. The claimant would conduct informal weekly meetings with the leadership team following his weekly conference call with Mr. Curry. Sometimes, the “meetings” took the form of an email message to the leadership team setting forth concerns raised by Mr. Curry. When leadership staff were available for in-person meetings, the claimant conducted weekly in-person meetings. The claimant conducted the twice-daily meetings with hourly staff and would at times add and end-of-shift debriefing. The claimant failed to put appropriate plans in place to incentivize hourly employees to market club membership upgrades in connection with a weekend promotion.

On March 5, 2021, Mr. Curry had issued another reprimand to the claimant. That reprimand followed a Friday evening incident wherein an hourly associate and a lead person stopped a club member for suspicion of theft. It turned out the member had not stolen anything. The staff notified the claimant on Friday evening, while the claimant having dinner with his wife to celebrate her birthday. On Saturday, the claimant reviewed video surveillance. On the following Monday, the claimant spoke with Mr. Curry about the incident as part of Mr. Curry’s weekly call to the store. The employer faulted the claimant for not taking additional steps to follow up with the staff and the member. The employer had not time protocol for such follow up.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

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 disqualification shall continue 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Admin. Code r. 871-24.32(4).

The evidence in the record establishes a discharge or no disqualifying reason. The employer identified some performance concerns that needed to be remedied. However, none of the concerns the employer identified demonstrated, individually or collectively, a willful and wanton disregard of the employer's interests. The claimant's failure to perform to the satisfaction of the employer did not constitute misconduct in connection with the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The October 12, 2021, reference 01, decision is affirmed. The claimant was discharged on August 24, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

January 18, 2022
Decision Dated and Mailed

jet/mh