

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLENE K LARGENT**  
Claimant

**APPEAL NO: 09A-UI-06993-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 03/08/09**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer)) appealed a representative's April 22, 2009 decision (reference 01) that concluded Charlene K. Largent (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2009. The claimant participated in the hearing and was represented by Laura Jontz, Attorney at Law. Kenny Johnson on behalf of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Sean Stewart. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 5, 2006. Since July 13, 2006 she worked full time as an optical associate at the employer's vision care center at its West Des Moines, Iowa store. Her last day of work was March 10, 2009. The employer discharged her on that date. The reason asserted for the discharge was poor customer service and having multiple customer complaints.

The claimant had previously been counseled regarding having an abrasive attitude. She had been given a final warning/decision-making day on January 10, 2009 for issues regarding errors in insurance applications. On February 24 a customer came in wanting to get a contact lens prescription refill for her granddaughter. The claimant first had difficulty in locating the granddaughter in the computer system and had indicated the granddaughter might need a new examination before a prescription could be filled, but then found that there had been an error in the date in the computer file. The customer was unhappy with these difficulties and inaccuracies in the computer records. She became further upset when the claimant explained that there was no current stock of that particular prescription in the store, that they would have to be ordered, which could take seven to ten days.

The customer called the employer's store manager on February 25 and verbally complained, indicating that the claimant had been rude and loud and did not apologize for the inconvenience. Within a day or two of that, the employer spoke to some other employee who had reportedly been working in the area at the time and also felt the claimant had been rude and loud. The customer submitted a written complaint on about February 27. The employer also received some other more general complaint on or about February 26 regarding an issue from February 4.

The claimant denied that she had been rude, loud, or uncooperative in dealing with the customer, but rather indicated the customer had been difficult and impatient. She was not notified of there being a current problem until she was brought in and discharged on March 10.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her customer service, most particularly with the customer on February 24. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact was rude, loud, or inappropriate in her handling of the customer. Further, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred two weeks prior to the

employer's discharge of the claimant, and the employer was on notice by the day after the incident. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's April 22, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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