

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA E MOHR
Claimant

APPEAL NO. 06A-UI-09955-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09-10-06 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 3, 2006, reference 01, fact-finder's decision that held her ineligible for benefits upon a finding that the claimant was discharged under disqualifying conditions. After notice was issued, a hearing was held by telephone conference call from Des Moines, Iowa, on October 25, 2006. The claimant participated. Participating as a witness was the claimant's sister, Karen Eggert. Appearing as a witness for the employer was Alexis Mix, Assistant Store Director. Exhibits One, Two and Three were received into evidence.

ISSUE:

At issue in this matter is whether Ms. Mohr was separated from her employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mohr was employed as a produce stocker for Wal-Mart Stores from August 6, 2002 until September 1, 2006 when she was discharged from her employment. The claimant was employed on a full-time basis and was paid by the hour. Her immediate supervisor was Mr. Calkins.

The claimant was discharged one week after reporting to her supervisor she had consumed one or two bagel chips from a damaged package that was to be discarded with other similar unsellable merchandise. The claimant sampled one or two chips while she was in the process of discarding the items and planned to pay for the bagel chips and consume them for lunch if the taste was still satisfactory. Upon realizing she may have violated company policy by doing so, the claimant reported her conduct to her immediate supervisor. Ms. Mohr at the time was having trouble with her cognitive thinking processes and had been off work on a number of occasions for medical reasons that were related. After being discharged the claimant suffered a stroke. The claimant believes her cognitive thinking issues were a prelude and preceded her cardiovascular accident (stroke).

After considering the claimant's conduct for a one-week period the decision was made to terminate the claimant from employment as the claimant's conduct was in violation of the company's policy which prohibits consuming merchandise that has not been purchased.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge having heard the testimony in this matter, having examined the exhibits and considering the matter at length is of the opinion that the evidence does not establish that the claimant intentionally and willfully was in disregard of the employer's interests or standards of behavior in this case. The evidence establishes that Ms. Mohr had been off work on a number of occasions but due to memory and cognitive issues, that were apparently a prelude to a stroke that the claimant suffered shortly after being discharged from her employment. The evidence establishes that during the weeks or days preceding the incident in question the claimant was having difficulty thinking clearly. On the day in question Ms. Mohr had been instructed to dispose of a number of packages of product that the employer did not consider to be saleable. In conjunction with disposing of the products, the claimant tasted one or two chips out of a package that was apparently damaged. The claimant's intention was to taste the chips and to purchase a package if the taste still seemed to be acceptable. Upon realizing that she had potentially violated a company policy, Ms. Mohr self-reported herself to her immediate supervisor and candidly explained that she had consumed one or two chips and the reasons for it as well as her intention to purchase the chips during her lunch period that was soon to begin. The employer did not choose to immediately discharge the claimant for a violation of company policy but instead considered the matter for approximately a one-week period. It appears that the employer was factoring in the circumstances surrounding the claimant's infraction before deciding whether or not to discharge Ms. Mohr.

It is the opinion of the administrative law judge based upon the hearing record that the claimant's conduct in this case did not rise to the level of intentional disqualifying misconduct as

envisioned in Iowa Employment Security Law. The administrative law judge finds that the claimant's conduct was more an instance of an isolated instance of poor judgment that may have been contributed in part by her medical condition at the time.

While the decision to terminate Ms. Mohr may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge is of the opinion that the claimant's conduct did not rise to the level of disqualifying misconduct in connection with the work.

DECISION:

The fact-finder's decision of October 3, 2006, reference 01, is reversed. The claimant was separated under non disqualifying conditions and is eligible for unemployment insurance benefits, provided that she meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw