

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE L MCCARTNEY
Claimant

APPEAL NO. 12A-UI-12364-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09/16/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 9, 2012, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 8, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Joseph Basque. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a night-shift cashier from September 28, 2011, to September 22, 2012. The claimant was informed and understood that under the employer's work rules, selling liquor to persons under the age of 21 was prohibited.

On September 22, 2012, the claimant checked a woman's identification before selling her a six-pack of beer and negligently believed that she was 21. The store was short-staffed for cashiers that evening. The claimant was extremely busy and there were long lines of customers waiting to be checked out. She had been working every day for two weeks and was fatigued.

The sale was part of a police sting operation and the claimant was later interviewed by the police regarding the sale. The claimant discussed what had happened with management. The employer discharged the claimant for selling alcohol to someone under 21.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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 evidence shows the claimant's violation of the under-age sale of alcohol rules was due to isolated negligence, not willful and substantial misconduct. The employer, which did not participate in the hearing, has not met its burden of proof.

DECISION:

The unemployment insurance decision dated October 9, 2012, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw