

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FELICIA ELY
Claimant

APPEAL NO: 10A-UI-03427-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01-31-10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 19, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 15, 2010. The claimant participated in the hearing. Cindy King, Asset Protection Coordinator, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time asset protection associate for Wal-Mart from May 27, 2009 to January 29, 2010. The employer's policies prohibit an associate from being involved in a romantic relationship with another associate, if the associate supervises the other associate or if the associate conducts an investigation involving the other associate and financial issues. The claimant was having a romantic relationship with, and in fact, living with another associate who worked in electronics. She was not his supervisor but was in charge of merchandise so if anything in electronics was missing, the claimant would have to assist in the investigation of her romantic partner. The claimant's actions were considered an intentional violation of the employer's policy and her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

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.

The claimant was discharged for violation of the employer's policy that prohibits associates from having a romantic relationship with another associate, when the associate may have to investigate their partner. The claimant admitted the relationship but said she would not have participated in an investigation regarding her partner if it had become necessary. The Court has long held that while the employer may have compelling business reasons to terminate a claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). This case is an example of that rule. The claimant was not acting against the employer's interests and her actions were in no way detrimental to the employer. The employer has not met its burden to prove the claimant was discharged for work-connected misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 19, 2010, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs