IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SHELLY L REED
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 09A-UI-01751-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/21/08   R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 23, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 24, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Nancy Briggs and Rosalie Roland participated in the hearing on behalf of the employer. Exhibits One through Nine were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a jewelry associate from October 4, 2007, to December 26, 2008. The claimant was informed and understood that under the employer's work rules, jewelry showcases were to be locked at all times. The claimant had received discipline for absenteeism, including a decision-making day, which is the last stage in the employer's progressive discipline policy.

On December 15, 2008, a supervisor found a showcase unlocked. She reminded the claimant about the employer's policy.

On December 22, 2008, the claimant went on break. She had forgotten to lock the showcase up before going on break and a supervisor again found the unlocked showcase. She did not deliberately leave the showcase open; it was negligence. She was discharged for this along with her past history of discipline.

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 section 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 (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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. She did not deliberately violate the employer's security policy. The evidence does show negligence of such a degree of recurrence as to prove conduct equal to willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated January 23, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs