

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAYLOR S KROME**  
Claimant

**APPEAL NO: 18A-UI-06535-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 05/06/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Taylor S. Krome filed a timely appeal from a representative's unemployment insurance decision dated June 11, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on May 12, 2018, for dishonesty in connection with his work. After due notice was provided, a telephone hearing was scheduled for and held on June 29, 2018. Claimant participated. The employer indicated that it would not be participating.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with his work sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Taylor S. Krome was employed by Walmart, Inc. from August 2, 2016 until May 17, 2018. He was suspended without pay on May 12, 2018. He was subsequently discharged from employment on May 17, 2018. Mr. Krome was employed as a full-time non-conveyable order filler and was paid by the hour. His immediate supervisor was Shelly Hoffmeier.

Taylor Krome was injured in a work-connected incident on March 11, 2018. Claimant returned to work with a light duty limitation from his physician on March 24, 2018. The limitation allowed the claimant to return to light duty work but set limits as to the amount of time when Mr. Krome could spend on his feet besides walking.

Later in the day, he had turned in his doctor's limitations; Mr. Krome was questioned by his supervisor about whether he had changed anything on the doctor's note. Mr. Krome did not make any changes and stated so.

Approximately two weeks later, the employer again questioned Mr. Krome about whether he had made any changes in the doctor's limitation. The employer alleged that Mr. Krome had increased the number of hours on the form to allow himself to work more hours each day than had been authorized. Although Mr. Krome again denied the allegations, he was discharged from employment.

During the investigation, the employer first indicated to Mr. Krome that they had spoken to his doctor about whether any changes had taken place on the return to work form. Subsequently, the employer stated that they had not spoken to the doctor directly but only to his secretary. Mr. Krome denies making any changes on the form and believes that his discharge from employment was unjustified.

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

The question before the administrative law judge is whether the evidence in the record establishes disqualifying work connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5(2)a. 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment contested 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 and culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661,665 (Iowa 2000).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the claimant appeared personally, answered questions, and subjected himself to possible cross examination. In contrast, the employer did not present any evidence. In the absence of any evidence of equal weight that contradicts or denies the testimony of Mr. Krome, the weight of the evidence is established in favor of the claimant.

Here, the claimant denies altering the return to work document in any manner. Mr. Krome testified that he repeatedly denied making any changes to the form to his employer. Mr. Krome further asserts that the changes the employer alleged were contrary to his doctor's orders and his own understandings of his limitations after his work injury.

The administrative law judge finds the claimant's testimony to be credible and not inherently improbable. Mr. Krome denies making any changes on the return to work form or acting contrary to the employer's interests in any manner.

The employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant sufficient to deny unemployment insurance benefits. The administrative law judge concludes that the claimant was discharged for no disqualifying reason and is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's unemployment insurance decision dated June 11, 2018, reference 01, disqualifying the claimant from unemployment insurance benefits is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn