

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TOM LEAHY**  
Claimant

**WALMART INC**  
Employer

**APPEAL 19A-UI-07137-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/28/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant, Tom Leahy, filed an appeal to the August 29, 2019, (reference 01) initial decision that denied him benefits, based upon his discharge (firing) from employment at Walmart Inc. After proper notice, a telephone hearing was conducted on October 1, 2019. The claimant participated personally. He was represented by his sister, Berniata LaPage. The employer, Walmart Inc., participated through Jordan King, assistant manager. The claimant's appeal letter was admitted as Claimant Exhibit A. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Leahy was employed full-time as a cart attendant for Walmart Inc. for approximately three years and ten months until his discharge (firing) on July 23, 2019.

Mr. Leahy was trained on Walmart Inc.'s rules and procedures, including operating the "cart mule", which is the device used to retrieve shopping carts from the parking lot to the store. Prior to discharge, the claimant had demonstrated an ability to satisfactorily perform the job duties. The employer reported a shift in the claimant's demeanor in his final months of employment, in which he appeared agitated and unresponsive to employer feedback.

The employer issued a warning to the claimant May 27, 2019 because the claimant was responsible for a loose cart hitting a vehicle in the parking lot. The employer issued a second warning on June 25, 2019 after a customer complained about the claimant's interaction and infringement of personal space.

The final incident occurred when the claimant had two collisions of shopping carts into cars during the weekend of July 21-22, 2019. The claimant in one instance “T-boned” a vehicle when he did not stop the cart mule as a vehicle backed out, and then hit a vehicle’s passenger side when transporting carts. He was subsequently discharged (fired).

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all,

part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant was discharged after having too many collisions or accidents with shopping carts he was transporting to the employer's store. Each time the claimant would have a collision with the personal vehicle of an employer's customer, it could result in a claim for damages needing to be filed. The credible evidence presented is that the claimant had been warned before about accidents and at the end of the claimant's employment, and that he could perform the job duties satisfactorily based upon his tenure with the employer. For unknown reasons, the claimant became increasingly agitated towards the end of his employment, which may or may have impacted the execution of his job duties.

The administrative law judge is persuaded the claimant's final two accidents were preventable, and that the claimant failed to exercise due care to prevent the repeated accidents after warning. He knew or should have known that continued accidents could result in his employment ending. Based on the evidence presented, the administrative law judge concludes the employer has established by a preponderance of the evidence that the claimant willfully and wantonly disregarded the employer's substantial interests or committed repeated negligence of equal culpability. Accordingly, the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

#### **DECISION:**

The August 29, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn