

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE CAVIN
Claimant

WALMART INC
Employer

APPEAL 21A-UI-05573-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 10, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. The claimant participated and testified. The employer did not participate.

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:

The claimant, Jamie Cavin, started working for the employer, Wal-Mart Inc., on June 27, 2017. Prior to her separation, the claimant was working full-time as a customer service manager. The claimant's immediate supervisor was Front End Coach Beth White.

During a shift, approximately five other employees would have access to a safe in which lost and found items were stored. After two weeks, items and currency in the safe are disposed of by management. Miscellaneous items are thrown away. Phones and wallets are turned in to the police. Currency is donated to the Children's Miracle Network.

The employer provides its employees with access to its policies on OneWalmart, its intranet platform. Although the claimant is not certain, she believes at least one of its policies forbids employees from taking items that are not rightfully theirs.

On December 3, 2020, Ms. White and Assistant Manager for Asset Protection Mark Radar told the claimant that she took \$300.00 out of the lost and found safe in customer service on November 27, 2020. Ms. White and Mr. Radar informed the claimant they reviewed video recordings to verify she took the money. They did not show the claimant the video recording they reviewed. The claimant denied taking the money.

The claimant had not been disciplined for misconduct in the past.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

There is nothing in the record to support the claimant engaged in the misconduct she was accused of committing. The claimant denies she engaged in the misconduct she was accused of. The employer did not participate or otherwise provide proof of misconduct. Benefits are granted.

DECISION:

The February 10, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Sean M. Nelson
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April 29, 2021
Decision Dated and Mailed

smn/ol