

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

REBECCA M YOUNG
Claimant

APPEAL NO. 18A-UI-10246-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART STORES INC
Employer

**OC: 09/16/18
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Walmart (employer) appealed a representative's October 2, 2018, decision (reference 01) that concluded Rebecca Young (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 25, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Ellie Stafford, Assist Manager, and Barb Suminski, Personnel Coordinator. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 7, 2017, as a full-time sales floor associate in electronics. The claimant attended an orientation on March 7, 2017, where someone talked about the employer's attendance policy. The claimant could access the policy by going onto the employer's computer.

The claimant had a stroke on May 5, 2018, and she was granted intermittent Family Medical Leave Act (FMLA). She always properly reported her absences. The company to whom she reported her leave made mistakes in recording her absences. She properly reported her absence due to a medical condition on August 26, 2018. As of that date, she had accrued five points in a six month period. An employee who receives nine or more occurrences in a rolling six-month period will be terminated.

On September 11 and 12, 2018, the claimant was absent from work. The employer reported on the notice of claim that the claimant was absent on September 11, 12, and 13, 2018, and the employer discharged her. The assistant manager testified at the appeal hearing about a text from the claimant. She did not see it but the store manager told her the claimant's text said "I

guess I quit". The assistant manager was unsure of the date of the text. The assistant manager also testified at the appeal hearing that the claimant was a "no call no show" on September 11 and 12, 2018. The employer attempted to call the claimant but could not reach her. The employer assessed the claimant four occurrence points for each day. The claimant was discharged with thirteen occurrences.

The claimant told the fact finder that when she reported her absences to Assistant Manager of Security, she said there were inconsistencies on Sedgwick's report. The Assistant Manager of Security terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of September 16, 2018. The employer provided the name and number of Adeana Noah as the person who would participate in the fact-finding interview on October 1, 2018. The fact finder called Ms. Noah but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). 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 employer did not provide sufficient evidence of job-related misconduct. The testimony of the witness was internally inconsistent and inconsistent with the documents provided at the fact-finding interview. The administrative law judge finds the claimant's information to be more believable because she was an eye witness to the events for which she was terminated. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's October 2, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs