

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALERIE K WILSON
Claimant

APPEAL NO: 06A-UI-08800-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/30/06 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Valerie K. Wilson (claimant) appealed a representative's August 22, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2006. The claimant participated in the hearing. Mark Kent appeared on the employer's behalf and presented testimony from two other witnesses, Amanda Hall and Dave Pickens. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, 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 work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 29, 2002. She worked full time from that time through April 2005 as a sales clerk in the deli, from April 2005 through June 5, 2006 in customer service, and returned to the deli as a sales clerk as of June 6, 2006. Her last day of work was July 31, 2006. The employer discharged her on that date. The reason asserted for the discharge was not completing a health safety/cleaning checklist.

The deli has four meat slicers. Safety requirements require that the slicers be cleaned every four hours after use begins.

On July 25 the claimant worked a 7:00 a.m. to 4:00 p.m. shift. There were a total of five clerks on duty, some of whom had begun work before the claimant's shift began. Someone other than the claimant made an entry on the cleaning checklist for the slicers at 6:30 a.m.; it was not indicated if one of the slicers was actually used at that time or if they had just been checked. Assuming it had in fact been used, it should have been cleaned by 10:30 a.m. All of the clerks were equally responsible for checking and cleaning the slicers and reviewing and updating the checklist.

Shortly after 1:00 p.m. the claimant reviewed the checklist and saw that it appeared the slicers had not been cleaned since 6:30 a.m. She began to disassemble and clean the slicers, as she knew there was a consultant inspector coming sometime that day. She was finishing cleaning and reassembling the slicers shortly before 2:00 p.m. when the inspector came in and looked at the cleaning checklist. The claimant had not yet marked the time of cleaning on the checklist as she was not finished working on the slicers. When she completed reassembling the slicers, she went to sign the checklist, which the inspector and an employer representative handed to her to complete.

Because the claimant was the person who had undertaken to do the cleaning when she noticed it was late and it was overdue when she completed the work, she was cited for the failure to properly complete the checklist. She was discharged as she had previously been given warnings including a decision-making day on June 5, 2006 for unrelated issues during her time in customer service including attendance and inadequate attention to restrictions on the use of WIC (women, infants, and children) program checks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is that she had failed to properly complete the health safety/cleaning checklist. Under the circumstances of this case, the claimant's act was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While she had prior warnings, they were not with regard to the same or similar type of activity such as might imply an intentional violation for a repeated violation. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. Huntoon, supra; Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to properly complete the checklist. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 22, 2006 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs