

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHERY V VAN FOSSEN
Claimant

APPEAL NO: 14A-UI-08359-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/27/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 13, 2014 (reference 01) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the September 3 hearing. Spencer Jans, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2008. He worked full time as an overnight stocker. The claimant knew the employer had policy that informed employees they would be discharged if they violated the employer's violence-free workplace policy. The claimant understood the policy meant the employer would discharge him if he intentionally hit or injured someone at work.

On June 27 a co-worker, D, complained to the claimant about how many employees were working with the claimant in the frozen food department. The claimant suggested to D that he talk to a supervisor so other employees could help D in his department. D did not talk to a supervisor. D also complained about a new employee's work performance even though D was responsible for training the new employee. When the claimant and D were in the break room, they engaged in a verbal confrontation about these same issues. The claimant and D started arguing and swearing at one another. The claimant became frustrated with D. Finally out of frustration, the claimant picked up D's half-empty bottle of Gatorade and threw it against the wall. The plastic bottle hit the wall and rolled out the door. While other employees were sitting close by, no one was by the wall and the bottle did not hit or touch anyone.

Employees who usually work days reported the incident to Jans. Jans talked to employees who were in the break room about this incident. Jans also talked to the claimant and D. The next day, the employer talked to the claimant and asked if he was going to do anything to retaliate against D. The claimant told the employer he would not; he only wanted to work.

The employer reported the incident to the corporate office. The claimant had hip problems and went on a leave of absence in late June. When the claimant was on a leave of absence, corporate officials made the decision to discharge him for violating the employer's violence in the workplace policy. When the claimant returned from his leave on July 27, the employer discharged him. The employer discharged him only for the June 27 incident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The claimant used poor judgment when he tossed a bottle of Gatorade toward a wall when he was exasperated and frustrated. He did not think he was violating any workplace policy. The employer's assertion that the claimant could have hurt someone, while true, did not occur. Given the claimant was discharged just for the June 27 incident; this isolated incident does not rise to the level of work-connected misconduct.

It is also arguable that the employer discharged the claimant for an incident that does not amount to a current act. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). Even though the claimant went on a medical leave a few days after the incident occurred, the employer did not discharge him until a month after the incident occurred.

Based on the evidence presented during the hearing, as of July 27, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's August 13, 2014 (reference 01) determination is reversed. The employer discharged the claimant for business reasons, but the June 27 incident does not rise to the level of work-connected misconduct. As of July 27, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can