

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY S RAZO

Claimant

APPEAL NO. 06A-UI-09685-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 08/27/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's September 20, 2006 decision (reference 01) that concluded Peggy S. Razo (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 17, 2006. The claimant participated in the hearing. Mike Baumgardt, the store manager, appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2001. The claimant worked as a full-time customer service manager. Nikki Gilbreath was the claimant's supervisor. The claimant understood the employer did not allow employees to work off the clock. There were times the claimant interpreted for the employer and she was not clocked in. The employer adjusted the claimant's time so the claimant would get paid for the time she provided interpreting services.

Based on some issues with the claimant, the employer started its progressive discipline policy with the claimant. On September 21, 2005, the claimant received a written warning for writing several insufficient fund checks to the employer. The employer gave the claimant a final warning on August 2, 2006. The employer gave the claimant a final warning because the employer concluded the claimant had not been totally honest with an assistant manager. The claimant understood her job was in jeopardy after she received the August 2 final warning.

On August 24, the claimant clocked in about 11:00 a.m. The employer's rules state an employee must take a lunch break if the employee has worked six hours. The claimant had not

had lunch break after working six hours. The two employees who worked with the claimant were working in the back. The claimant paged the employees to relieve her so she could punch out and take her break. One of the employees indicated he would be back shortly. The claimant also paged a manager so she could leave and punch out. No manager responded to the claimant's page. The claimant understood the employer could write her up if she did not take a break at 5:00 p.m. The claimant punched out at 5:01 p.m. so the employer would not write her up or discharge her for violating this policy. The claimant stayed at the job station until another employee came. The claimant's supervisor came at 5:15 p.m. When the claimant saw her supervisor, she indicated she had to leave because she was working off the clock. The claimant left and went on her break. The claimant planned to adjust her time later so the employer would not write her up for working off the clock.

Before the claimant had an opportunity to get her time adjusted, Baumgardt received information about the incident. Management forwarded the information to corporate management. On August 26, 2006, the employer discharged the claimant because she violated the employer's policy on August 24 and her next disciplinary step was termination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood her job was in jeopardy when she received the final written warning on August 2, 2006. On August 24, the claimant understood the employer could discharge her if she did not punch out for a break at 5:00 p.m. The claimant tried to get other employees to relieve her, but they were busy. Even when the claimant paged a manager, no one came. The claimant did not want to violate the six-hour rule, so she punched out. Since the employer previously adjusted her time when she performed services off the clock, the claimant planned to adjust her time later. The claimant knew the employer did not allow employees to work off the clock.

On August 24 the claimant found herself in a Catch-22 situation. The claimant's actions on August 24 do not establish that she intentionally or even substantially disregarded the employer's interests. The claimant took a course of action she believed was reasonable and in

the employer's best interests because she could not leave the customer service desk or the front end empty.

The employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed a current act of work-connected misconduct on August 24. Therefore, as of August 27, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 20, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 27, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw