

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEFANIE M ANDERSON
Claimant

APPEAL NO. 08A-UI-02303-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/03/08 R: 01
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Stefanie Anderson, filed an appeal from a decision dated March 5, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 24, 2008. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Assistant Manager Lisa Dutton. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Stefanie Anderson was employed by Wal-Mart from February 14, 2006 until February 7, 2008, as a full-time deli worker. An incident was reported to management but the parties do not agree as to when the report was made or by whom. Ms. Anderson says she went to Assistant Manager John Straka the first week of January 2008 and complained about a co-worker, Stephanie Jackson, making comments about her family. Ms. Jackson allegedly said Ms. Anderson's nephews were worthless and should be dead. The employer's witness, who was only referring to computer records, said the complaint was made by Cassie Christensen on January 22, 2008, about a confrontation between Ms. Jackson and Ms. Anderson.

After the complaint was made the claimant maintained she and Ms. Jackson and Ms. Christensen, signed statements about what had occurred but nothing was offered into evidence by the employer. Ms. Anderson did admit to becoming angry with Ms. Jackson and saying, "I so bad want to hit you but I won't, I'm going to manager's office," and then talked with Mr. Straka.

Nothing was done about the situation for nearly four weeks when, on February 7, 2008, the claimant was discharged for threatening Ms. Jackson.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

The claimant did admit to telling a co-worker that she wanted to hit her but would not. The administrative law judge does not consider this to be a threat of physical violence against a co-worker. Ms. Anderson's statement specifically said she would not hit Ms. Jackson but would file a complaint with a manager.

Even if the employer considered the statement to be a violation of the workplace violence policy, Wal-Mart has not presented any explanation for a delay of two to four weeks before acting on it. Interviewing three people should not take that long a period of time and would make it beyond a current act of misconduct as required by the above Administrative Code section. As there was no current, final act of misconduct, disqualification may not be imposed.

DECISION:

The representative's decision of March 5, 2008, reference 01, is reversed. Stefanie Anderson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css