

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEWELTEE A ADMIRE
Claimant

WAL-MART STORES INC
Employer

APPEAL 15A-UI-04852-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 20, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2015. The claimant participated. The employer participated through attorney. Brendan Fitzgerald, human resources manager. Cheryl Kirkland, and store manager. Nick Brungardt.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time beginning July 2, 2012. Initially, she was an over-night stocker. In January 2013, she became a cashier. She was separated from employment on April 6, 2015, when the employer terminated her employment.

On April 4, 2015, the claimant sold cigarettes to a minor in a sting operation. The claimant became anxious during the interaction because the customer was demanding and there was a long line at her register. She looked at the identification card and determined that it was not fake. When looking at the birthdate, she transposed the numbers such that she thought the customer was of age. She entered the override code that is used for people that are clearly over the age of majority. After the customer left the store, she realized that she had transposed the numbers and tried unsuccessfully to get a manager to address the situation. The claimant did not know the customer. An undercover officer in line told her that she had just sold cigarettes to a minor and gave her a citation. He told her it was a misdemeanor and she needed to pay a fine or go to court. He would contact her if further legal action was taken.

She completed her shift on April 4 and was scheduled to be off on April 5. While at work on April 6, she met with her supervisor and was required to sign a statement about the incident. She reported that she had transposed the birthdate numbers in her head but only realized it

after the customer had left her cash register. She had tried to get help from management after she realized what she had done. The claimant was fired.

The claimant is undergoing treatment for anxiety of which she informed her employer before April 4, 2015. She thinks she also has dyslexia but has not been so diagnosed. The claimant informed her supervisor that she sometimes "twisted" letters and numbers.

The claimant paid the approximately \$200 fine in person and was told that there would be no further action.. She had no further contact from law enforcement or a government attorney.

In 2012, 2013 and 2014, the claimant completed the required computer-based training regarding employer policies including sale of tobacco and alcohol. Progressive discipline is undertaken if an employee sells alcohol or tobacco to a minor during an internal audit. Under Wal-Mart policy OP34, if such a sale occurs during a sting by law enforcement, the employee is automatically terminated. The claimant had no prior discipline regarding sales of tobacco to a minor, was not given a specific warning, and was not told her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The claimant's testimony regarding the reason for her conduct on April 4, 2015 is credible. Her actions were accidental and due to being agitated. She did not intentionally sell cigarettes to a minor. As soon as she recognized her error she tried to get help to correct it. Her conduct was not indicative of either wrongful intent or deliberate disregard of the employer's interests.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of accidentally transposing numbers and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Training or general notice to staff about a policy is not considered a disciplinary warning. The employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

DECISION:

The April 20, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/css