

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TANNER J BAKKE**  
Claimant

**WALMART INC**  
Employer

**APPEAL 23A-UI-08402-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/06/23**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the August 24, 2023 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon a discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on October 20, 2023. The claimant participated personally. The employer participated through witnesses Neil Anderson and Eric Hansen. No exhibits were admitted into the record. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Was the claimant's separation from employment disqualifying?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time beginning January 16, 2018. His most recent job title was auto care technician at the employer's tire lube express shop.

On August 2, 2023, claimant worked on a vehicle where the tires were removed. When the tires are removed from a vehicle, the proper procedure is to have two technicians adjust the torque on the tires. The first technician will adjust the torque, the second technician will adjust the torque, then the vehicle is driven in a figure eight outside the garage and brought back into the garage to have the first technician adjust the torque again. All three of the adjustments are for quality control purposes and are logged into the computer system by each technician when they scan their badge, which reports that the quality control was completed. This process is outlined in the employer's written policies and in the training that the auto technician receives annually from the employer. Because these quality control checks are in place for safety purposes, an employee's violation of the policy may lead to discharge. The fact that this safety violation may lead to discharge is outlined in the employer's written policies, which the claimant had access to.

Both Mr. Anderson and Mr. Hansen reviewed video footage of the claimant and another technician working on a vehicle on August 2, 2023. During their work process, the claimant, who was the first technician, did not drive the vehicle in a figure eight and did not perform the third torque quality control check that he was required to do, pursuant to the policy. Claimant scanned his badge into the computer system, acknowledging that he did complete the third quality control check, when in fact he had not.

Claimant was discharged for violation of the employer's safety policies that require employees to follow proper quality control protocols. Claimant had received a previous discipline in May of 2023 for productivity and failing to follow specific processes that the employer had in place.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(2)a & d provide in pertinent part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of the 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 obligation to the employer. Misconduct by an individual includes but is not limited to all of the following: ...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer....

The employer has the burden of proof in establishing disqualifying job-related misconduct.<sup>1</sup> In unemployment insurance benefits cases, the issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits.<sup>2</sup> What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.<sup>3</sup> Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits.<sup>4</sup> Such misconduct must be "substantial."<sup>5</sup>

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<sup>1</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>2</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>3</sup> *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

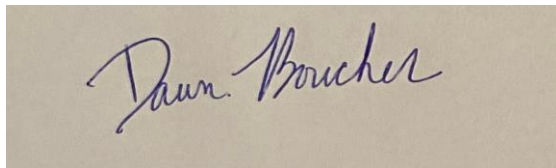
Iowa Admin. Code r.871-24.32(8) provides:

(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.

Claimant knew he was required to complete the third quality control torque check on the vehicle and intentionally failed to do so, in violation of the employer's written policies. Worse yet, claimant intentionally swiped his badge on the computer system alleging that he had completed the third check, when in fact he had not. Claimant's intentional refusal to follow the employer's written policies that he had been previously trained on is considered job-related misconduct. Further, this behavior is substantial as quality control processes are put in place for the safety of the customers that the employer is servicing. The separation from employment is disqualifying and benefits are denied.

**DECISION:**

The August 24, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for substantial job-related misconduct. Unemployment insurance benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after the August 3, 2023 separation date, and provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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October 23, 2023  
Decision Dated and Mailed

DB/jkb

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<sup>5</sup> *Id.*

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.