

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANENE R CHURCH**  
Claimant

**APPEAL NO. 08A-UI-10275-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 10/05/08 R: 01**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Janene R. Church (claimant) appealed a representative's October 24, 2008 decision (reference 01) that concuded she was not qualified to receive benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2008. The claimant participated in the hearing. John Slaus, a co-manager, and Tara Treber 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 8, 2002. The claimant worked full time as a deli sales associate. The employer's policy informs employees they are subject to immediate termination if they commit gross misconduct, such as violating the employer's integrity policy. The claimant did not understand the employer's understocking policy.

Prior to October 2, 2008, the claimant's job was not in jeopardy. In weeks just prior to October 2, the claimant noticed the employer threw out a great deal of food because it had been in the hot case for the maximum time allowed and was not sold. Throwing away so much food bothered the claimant. On October 2, a chicken had been in the hot case for two hours and was ready to be thrown away. The claimant decided it was too wasteful to throw away the chicken. Instead of throwing the chicken away, she marked it down 50 percent and put in the cooler so she could pay for the discounted chicken and take it home after work. The manager on duty noticed the chicken in the cooler and reported this to the employer.

The employer concluded the claimant violated the employer's understocking policy by removing merchandise the public could have purchased and ultimately took the employer's merchandise without authorization. The employer also concluded the claimant violated the employer's integrity policy. The claimant however, considered her actions to give the employer money for the chicken instead of throwing away the chicken and getting nothing. The claimant planned to pay the employer half of the original cost. The employer discharged the claimant on October 3, 2008, pursuant the employer's policy for committing gross misconduct.

**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).

Pursuant to the employer's policies, the employer established business reasons for discharging the claimant. The claimant violated the employer's policy, but she did not intentionally disregard the employer's interests. First, the claimant did not understand the employer's understock policy. From the claimant's perspective, she paid the employer money for the chicken instead of throwing away the chicken. The claimant knew the chicken was to be thrown away after sitting in the hot case for two hours, but concluded it was safe to eat after she put it in the cooler. Also, instead of the employer receiving nothing for the chicken if it were thrown away, the claimant would pay the employer 50 percent of the original price. The claimant had not done this before. The claimant should have talked to her supervisor before she discounted the chicken instead of throwing it away. The claimant used poor judgment when she failed to talk to a supervisor. The claimant did not, however, commit work-connected misconduct. Therefore, as of October 5, 2008, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 24, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 5, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw