

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE J ORIGER

Claimant

APPEAL NO. 13A-UI-10758-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 08/18/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joe Origer (claimant) appealed a representative's September 12, 2013, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Wal-Mart (employer) for destruction of company property. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 15, 2013. The claimant participated personally. The employer participated by Josh Bonney, Shift Manager; Irit Keren, Assistant Manager; and Brandon Pohlman, Asset Protection Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 9, 2008, and at the end of his employment he was working as a full-time maintenance associate. The claimant signed for receipt of the employer's handbook on January 9, 2008, and February 25, 2011.

On June 30, 2013, the claimant tried to swipe his badge but the time clock was not working. He punched the time clock with his fist, breaking the glass, and making the time clock inoperable. He did not report the damage to the employer. All employees had to use the second time clock that did not work well. On October 8, 2013, the asset protection manager returned to work from having time off and examined the recording of the time clock area. He saw the claimant extend his arm fully as he hit the time clock with his fist. On July 10, 2013, the claimant admitted to becoming frustrated with the time clock, tapping it with his fist, and breaking it. He was surprised that the screen broke. The employer terminated the claimant on July 10, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally punched the time clock. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's September 12, 2013, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs