

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WALTER T SAVAGE
Claimant

APPEAL 21A-UI-11890-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

**OC: 03/21/21
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC) benefits

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the April 5, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon the claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 9, 2021. The claimant participated personally. The employer participated through witness Jonathan Cain. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer host. His employment began on May 8, 2019. Claimant's employment ended when he was discharged by Mr. Cain on or about April 5, 2021.

On March 22, 2021, two teenagers were running in the store. Claimant told the teenagers on numerous occasions to stop running. Both teenagers were running at the claimant. Claimant stepped to the left to get out of the way of one of the teenagers; however, that put him in the way of the other teenager. Claimant put his hands up to prevent a collision between him and the teenager; however, they still collided and the teenager fell into an electronics display. Claimant was discharged for violation of the employer's policy against physical contact with customers.

No notice of fact-finding interview was mailed to the employer to participate in any fact-finding interview. The administrative records establish that a cold call was made to the parties. Claimant has received regular unemployment insurance benefits of \$4,693.00 from March 21,

2021 through July 31, 2021. Claimant has received FPUC benefits of \$3,600.00 from March 21, 2021 through June 12, 2021.

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. Benefits are allowed, provided the claimant is otherwise eligible.

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:

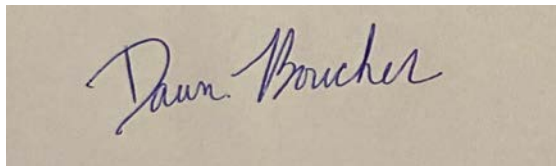
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling 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.

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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).

Claimant put his hands up to prevent an impact when a teenager was running at him. This final incident cannot be considered an incident of insubordination or any other type of substantial job-related misconduct. If anything, claimant's actions were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment and chargeability are moot.

DECISION:

The April 5, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

August 12, 2021
Decision Dated and Mailed

db/scn