IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATTHEW C STUBBE
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 09A-UI-07235-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/29/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wal-Mart Stores (employer) appealed a representative's April 29, 2009 decision (reference 02) that concluded Matthew Stubbe (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 4, 2009. The claimant participated personally. The employer participated by Jan Dowdy, Assistant Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 September 21, 2005, as a part-time tire lube express technician. The claimant and employer agreed at the time the claimant was hired that he would work weekends during the school year and weekdays during the summer.

On February 28, 2009, the claimant reported to his supervisor that he could not work. The supervisor approved the claimant's absence. The claimant was unaware that the employer scheduled him to work weekdays on March 3 and 6, 2009. The claimant told the employer he could work March 23 through 27, 2009, during his spring break. The employer scheduled the claimant to work on March 28, 2009, without the claimant's knowledge. The employer assumed the claimant quit work on March 28, 2009, when he did not appear for work.

On April 1, 2009, the claimant talked to the employer about rumors he had been fired. The employer told the claimant he had been absent without notice on February 28, March 3, 6, and 28, 2009. The employer had not talked to the claimant about any of those days until April 1, 2009. The employer considered the claimant to have quit on March 28, 2009, for being absent without reporting for at least three days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention to voluntarily leave work. The claimant's separation has to be considered involuntary.

For the reasons that follow the administrative law judge concludes the claimant was not 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). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct at the hearing. The claimant clearly reported his absences on February 28 and March 28, 2009. The employer never scheduled the claimant for work during the week during the school year. The claimant would not have looked for weekday work on the schedule. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 29, 2009 decision (reference 02) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs