

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAMELA ADAMS
Claimant

WAL-MART STORES INC
Employer

APPEAL 15A-UI-06546-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/17/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 3, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2015. Claimant participated. Employer participated through Angela Richards, Assistant Manager.

ISSUE:

Was the claimant discharged due to job connected 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 baker beginning on May 19, 2009 through May 20, 2015 when she was discharged. When hired the claimant was given access to the employer's policy manual and knew that if she received four write ups she could be discharged. Prior to the final incident the claimant had received three written write ups and knew that on the fourth write up she could be discharged.

At the beginning of her work shift at approximately 6:10 a.m. on May 19 the claimant took a pallet of frozen bread dough out of the freezer. The employer's 'cold chain' policy required that she not leave the frozen food out of the freezer for more than fifteen minutes. The claimant got busy and opted to leave the frozen bread sit out in the bakery for the entire length of her shift. She asked another employee around 4:00 pm to put the bread back in the freezer. By that time the bread had been out of the cooler over eight hours. Another employee found the pallet still outside the cooler at 11:00 pm. The claimant could have sought assistance from the manager, but instead opted just to leave the bread out of the freezer. Her actions resulted in \$1,500.00 of bread being ruined. Since this was the claimant's fourth write up, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant simply did not follow the cold chain policy and ended up leaving frozen bread sit out in the warm bakery for the entire eight hours of her shift. Her actions are conduct not in the employer's best interest and are sufficient job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The June 3, 2015, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs