

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN A DAHLSTROM
Claimant

APPEAL NO: 11A-UI-12352-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/17/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Suspension

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 12, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Brad Tenderson, a shift manager, participated at the hearing. Jodi Kappas observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer suspend the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2004. The claimant worked as a full-time meat sales associate. One of the employer's policies requires employees to report any arrests involving a sexual offense. The employer's policy also states that if an employee is arrested they may be suspended until the charge has been resolved.

On June 23, 2011, the claimant reported he had been charged with a third degree felony sexual offense. Based on the employer's policy, the employer suspended the claimant that day. The employer informed the claimant he would be suspended until the charge against him has been resolved. As of October 11, the charge has not been resolved.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges or suspends him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The employer has the burden to prove the claimant was discharged or suspended 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 or

suspension is not at issue in an unemployment insurance case. An employer may be justified in discharging or suspending 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).

Based on the employer's policy, the employer established a business reason for suspending the claimant. The fact the claimant was charged and arrested does not establish that he committed the crime he has been charged with. The evidence does not establish the charge has any connection with the claimant's employment. The employer suspended the claimant, but it is not a disciplinary suspension. Until the charge is resolved it is not known if the claimant committed the crime. The evidence does not establish the claimant committed work-connected misconduct. As of July 17, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's September 12, 2011 determination (reference 01) is reversed. The employer has not discharged the claimant. Instead, the employer suspended the claimant until the offense he has been charged with is resolved. The employer established business reasons for suspending the claimant, but the facts do not establish that the claimant committed work-connected misconduct. As of July 17, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs