

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L MULDER
Claimant

APPEAL NO: 12A-UI-08765-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/24/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Richard L. Mulder (claimant) appealed a representative's July 12, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2012. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on June 13, 2007. He worked full time as an overnight maintenance and janitorial worker at the employer's Spencer, Iowa store. His last day of work was June 23, 2012. The employer sent him home on suspension that morning and discharged him on June 25, 2012. The stated reason for the discharge was making a threat against a manager.

On his overnight shift from 10:00 p.m. to 7:00 a.m. on the night of June 22 into the morning of June 23 the claimant was frustrated, possibly due to lack of sleep, and he was complaining to a support manager as to why an assistant manager seemed to always give him the "crappy jobs." As he spoke, he stated, "If I had a scraper, I'd cut her," referring to the bladed tools he sometimes used to scrape debris from the floor. He immediately realized that he had said something inappropriate. The support manager proceeded to report the incident. The police

were summoned, and the claimant was arrested and charged with simple misdemeanor assault. He was suspended and then discharged for the incident on June 25. About a week prior to the incident he had been given a warning for having a negative attitude. He subsequently pleaded guilty to the assault charge.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the employer's decision not to participate in the hearing and in essence not protest the claimant's claim renders the separation issues moot. However, claimants are not automatically qualified in the absence of a protest. *Kehde v. Iowa Division of Job Service*, 318 N.W.2d 202 (Iowa 1982). The employer's attempted withdrawal of the protest is ineffective.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's making of the threat against the assistant manager, particularly only a week after having been warned for displaying a negative attitude, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 12, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 23, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs