

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC PORTER
Claimant

WAL-MART STORES INC
Employer

APPEAL 17A-UI-00231-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/11/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 27, 2016 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. An in-person hearing was held on May 24, 2017 in Davenport, Iowa. The claimant, Eric Porter, participated personally and was represented by Attorney Jeffrey Jacobs. The employer, Wal-Mart Stores Inc., did not participate. Claimant's Exhibits A - E were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an Assistant Manager. Claimant was employed from April 19, 2012 until December 7, 2016 when he was discharged from employment. Claimant's job duties involved supervising staff, directing work-flow, and general operation of the store. Claimant typically worked Sunday, Monday, Tuesday, and Wednesday each week from 8:00 p.m. to 8:00 a.m. Dan Cosner was his immediate supervisor.

On December 1, 2016, claimant was questioned by Mr. Cosner whether he had engaged in inappropriate conduct, whether or not he was kissing and hugging another assistant manager in the store, and whether or not he was in a romantic relationship with another assistant manager. Claimant responded that he had not engaged in any inappropriate conduct with another assistant manager and that he did not have to disclose any relationship with another assistant manager. Mr. Cosner responded to claimant that it was ok to be in a relationship with another assistant manager and that claimant was correct that he did not have to disclose that information.

On December 7, 2016 claimant was discharged by Mr. Cosner for allegedly making false statements during the December 1, 2016 meeting. Claimant had been involved in a romantic relationship with another assistant manager, however, neither party had supervisory duties over the other. Further, claimant had kissed and hugged the other assistant manager while he was off-duty in the manager's break room. When asked about this at the December 1, 2016 meeting claimant did not deny the allegations regarding kissing and hugging but stated that he did not feel he needed to disclose the information. Claimant was not dishonest with Mr. Cosner.

This employer has a written policy against inappropriate conduct. See Exhibit A. The policy provides that inappropriate conduct "such as obscene, profane, gross, violent, discriminatory, bullying or similarly offensive language, gestures or conduct" are not tolerated. See Exhibit A.

This employer has a written policy with regard to disclosure of romantic relationships. See Exhibit B. The policy provides that "[w]hen a supervisory relationship exists between two associates who are related or who desire to pursue a romantic relationship, one of the associates must disclose the existence of the relationship to an appropriate salaried member of management and request a transfer for one of the individuals involved to eliminate their supervisory relationship." See Exhibit B. Claimant's romantic relationship was with another assistant manager and neither party had a supervisory relationship with the other at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job 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). 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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

There was no credible evidence presented that claimant was dishonest to Mr. Cosner during the December 1, 2016 meeting. Accordingly, the employer has failed to meet its burden of proof in establishing that the claimant's conduct consisted of deliberate acts which constituted an intentional and substantial disregard of the employer's interests. As such, benefits are allowed.

DECISION:

The December 27, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed so long as claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn