

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT PARSANO
Claimant

APPEAL NO: 12A-UI-00060-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12-04-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 28, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 1, 2012. The claimant participated in the hearing. Julie Liechty, human resources office manager, and Shannon Messer, operations manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shipping loader for Wal-Mart from September 22, 2010 to November 30, 2011. The claimant received written procedural coachings March 29, 2011 and April 25, 2011, for returning from lunch one minute late. He received a written procedural coaching May 11, 2011, after the employer conducted a load audit and found the claimant failed to follow DOT guidelines stating all hazardous containers have to be labeled and loaded with the arrows up. The claimant received a written procedural coaching May 30, 2011, for returning six minutes late from lunch. The claimant received a Step One written warning for failing to report an injury he sustained at work. The claimant stated he did not realize he hurt his shoulder until he woke up the following morning and he reported the situation at that time. The claimant received a Step Two written warning July 20, 2011, after he missed two dance pallets. He received a procedural written coaching after he was six minutes late in returning from lunch July 20, 2011. The claimant received a Step Three written warning August 1, 2011, because he was driving a forklift too fast and clipped another pallet which fell over and knocked another employee down. He received a procedural written coaching August 23, 2011, for taking a long lunch break. He received a written coaching November 29, 2011, for failing a load audit because he did not load and shrink wrap two pallets to be placed in front of the trailer doors to prevent load shifts and freight tumbling out when the trailer was opened (Employer's Exhibit Two). He also failed the audit because he did not utilize a proper foundation for the pallet by

placing smaller boxes in the cracks between bigger boxes so the freight does not shift or collapse, which resulted in the claimant reaching Step Four and the employer terminated his employment.

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 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 claimant received nine warnings between March 29 and August 23, 2011, before the final incident November 29, 2011, that resulted in the termination of his employment. Most of his infractions were due to carelessness and could have been prevented if he simply slowed down. Under these circumstances, the administrative law judge must conclude the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The December 28, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw