

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY D ATKISSON YINQUEZ
Claimant

WALMART INC
Employer

APPEAL 20A-UI-07233-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the June 15, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 10, 2020, at 9:00 a.m. Claimant did not participate. Employer participated through Alex Baruth, Asset Protection Assistant Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Loader and Stocker from July 24, 2019 until his employment with Walmart ended on March 22, 2020. Employer has a policy that prohibits violence or threats of violence, including conduct that occurs away from work. (Exhibit 1) Claimant was informed of the policy.

On March 19, 2020, claimant was at the mall on his personal time and got into an altercation with mall security. Another Walmart employee who happened to be at the mall observed the altercation and tried to separate claimant and the security guard. Claimant was upset with the employee and told him "I know where you work" and "I can find you." The employee considered this a credible threat and reported it to employer. Claimant was not wearing his work uniform. Claimant did not name the employer. On March 22, 2020, employer discharged claimant for violation of the employer's Violence-Free Workplace Policy.

REASONING AND CONCLUSIONS OF LAW:

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

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 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).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be “work-connected.” *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The courts have concluded that off duty conduct can have the requisite element of work connection. *Kleidosty v. Emp’t Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that an employee’s off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee’s conduct (1) had some nexus with the work; (2) resulted in some harm to the employer’s interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer’s image would suffer. See also *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W. 2d 313 (SD 1988), quoting *Nelson v. Dept. of Emp’t Security*, 656 P.2d 242 (WA 1982); 76 *Am. Jur. 2d, Unemployment Compensation* §§77-78.

Claimant was discharged for threatening a coworker while off-duty. To be disqualifying, claimant’s conduct must be “work-connected.” Claimant’s statement concerned a coworker and, thus, had a nexus to work; it also caused harm to employer’s interest of providing a workplace where employees feel safe. Claimant’s statement violated employer’s Violence-Free Workplace Policy, because the policy includes conduct that occurs away from work. However, there is no evidence that claimant acted with intention or knowledge that employer’s image would suffer. Employer’s name was not referenced at all. Employer’s image could not suffer if no one knew that claimant and his coworker were employees of Walmart. While claimant’s conduct may have justified termination of employment, it does not constitute disqualifying job-related misconduct warranting a denial of unemployment insurance benefits. Therefore, benefits are allowed provided claimant is otherwise eligible.

Because claimant’s separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot. Because claimant is eligible for regular unemployment insurance benefits, claimant is also eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

DECISION:

The June 15, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot. Claimant is eligible for Federal Pandemic Unemployment Compensation.



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August 17, 2020
Decision Dated and Mailed

acw/scn