

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICK J BOOKOUT
Claimant

APPEAL NO. 07A-UI-01111-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 12/31/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's January 19, 2007 decision (reference 01) that concluded Nick J. Bookout (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2007. The claimant participated in the hearing. David Chapelle, a co-manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 21, 2005. When the claimant's employment separation occurred, he worked full-time in the pet department.

During his employment, the employer talked to the claimant about doing his job instead of wandering around the store or engaging in horseplay. This conversation occurred after the claimant received a spider bite at work. The employer learned the claimant had been playing with the spider before the spider bit him. The claimant received some written warnings, but the warnings had nothing to do with the reasons for the claimant's employment separation.

On December 31, the claimant was asked to go outside and help J. and R. bring in some shopping carts. When the claimant went outside, J. was pushing a number of carts toward the store. R. was toward the front guiding the carts. The claimant thought J. pushed the carts toward him too hard and were going to hit him. The claimant stuck his foot out to stop or slow down the carts coming toward him. As a result of this action, the first cart came back and pinched R.'s finger.

J. and R. reported this incident to the employer. R.'s finger was scraped, but the employee did not need any medical treatment. The employer concluded the claimant had kicked the cart as J. reported, and that as a result of his horseplay, the claimant caused a co-worker's finger to get pinched.

The employer discharged the claimant on December 31, 2006. The employer discharged the claimant because he engaged in horseplay that caused an injury to a co-worker.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged 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 is not at issue in an unemployment insurance case. An employer may be justified in discharging 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).

Since neither J. nor R. testified at the hearing, the claimant's version of what happened on December 31, 2006, must be given more weight than the employer's reliance on unsupported hearsay information. The claimant's conduct in putting out his foot to stop or slowdown carts does not constitute horseplay or an intentional or substantial disregard of the standard of behavior the employer has a right to expect from an employee.

The employer had justifiable reasons for discharging the claimant, but he did not commit work-connected misconduct. As of December 31, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 19, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 31, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw