

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW W HILBERT
Claimant

APPEAL NO. 06A-UI-09472-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/20/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. doing business as Sam's Club (employer) appealed a representative's September 15, 2006 decision (reference 01) that concluded Matthew W. Hilbert (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2006. The claimant participated in the hearing. Connie Johnson appeared on the employer's behalf and presented testimony from one other witness, Sarah Kresser. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 16, 2006. Since about January 20, 2006 he worked full time as an outside business marketing representative for the employer's Waterloo, Iowa store. His last day of work was August 24, 2006. The employer discharged him on that date. The reason asserted for the discharge was alleged falsification of daily paperwork.

The claimant was to provide daily sales recap sheets showing those businesses for which his efforts had resulted in the sale of a membership. He was allowed to not only include clients who submitted an application and payment for membership directly to him at the time of a sales call but also businesses who ultimately purchased a membership within a couple months of his business solicitation.

The employer had been developing some concern regarding the claimant's productivity as his sales numbers were down; as a result, it began scrutinizing the claimant's daily recaps. On August 15 the claimant reported that there were two business clients who had purchased memberships after he made a sales call. The employer contacted those businesses, who indicated that their decision to purchase memberships were not influenced by the claimant's

sales call which had been at least a month prior, that the claimant had not actually spoken to anyone in a decision-making position, and that he had only dropped off some written information. When confronted on August 24 the claimant acknowledged that he had not spent any notable time at the sales calls, which had been cold calls, and had only made the assumption that the businesses had purchased memberships due to his call when he saw that they had ultimately purchases memberships. He agreed that if the criteria was that he needed to have had direct discussion with the business decision-maker that those sales should not have been included on his sales record.

On August 21 the claimant reported the sale of a membership to a business client for which he had previously reported the sale of a membership a couple months before. When confronted, the claimant explained that when he had made the prior sale, he had been given an application and payment check from the business, but that the check had not cleared. When he spoke to the business, the business indicated that it would bring in a replacement check. He had assumed that the sale then had been cancelled from his prior reported sale's report pending replacement of the check, so when the business brought in a new payment, he reported the sale on that date. In fact, on the date of the original membership sale the employer had substituted another sale not made by the claimant for the one that was not completed due to the NSF check.

The claimant's compensation was not directly affected by the number of completed sales reported. He had not previously been warned regarding his sales reporting procedure. He had received a review on April 6 on which he had indicated as his goal to increase his closing of sales, but the review was overall positive and had resulted in a raise.

REASONING AND CONCLUSIONS OF LAW:

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 section 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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his incorrect inclusion of sales to some business clients on his daily reports. Under the circumstances of this case, the claimant's inclusion of those business clients was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 15, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs