

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBIN DUSKIN Claimant WAL-MART STORES INC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 11A-UI-10650-DT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 07/17/11 Claimant: Appellant (1)</div>
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Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robin Duskin (claimant) appealed a representative's August 5, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Wal-Mart, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on September 6, 2011. The claimant participated in the hearing. Kevin Wilson 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 8, 2006. He worked full time as sales associate in the grocery department at the employer's Creston, Iowa store, typically working evenings and mid-shifts. His last day of work was July 1, 2011. The employer discharged him on that date. The stated reason for the discharge was using inappropriate language on the sales floor in front of customers, after having received prior progressive discipline.

On July 1 the claimant had used the "f-word" while on the sales floor. A customer overheard the claimant, and complained to management. The claimant acknowledged he had used inappropriate language on the sales floor. The claimant had been given a prior warning on May 21, 2009 for productivity, a warning on March 19, 2010 for being inconsiderate to a customer, and a final warning on July 23, 2010 for in issue involving acceptance of gifts. The claimant was aware that the next step in the disciplinary process was discharge. Because of the incident on July 1 in light of the prior disciplines, the employer discharged the claimant.

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

§ 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); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's conduct on July 1, particularly in light of the fact that he had received multiple prior warnings, including one related to behavior with a customer, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 5, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 1, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs