

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BESSIE M VILES
Claimant

APPEAL NO. 10A-UI-06237-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 03/21/10
Claimant: Respondent (1)**

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 12, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 11, 2010. Claimant participated. Employer participated by Jeff Jones, Assistant Manager. The record consists of the testimony of Jeff Jones and the testimony of Bessie Viles.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a service writer in the tire and lube department of the Wal-Mart store in Windsor Heights. She began her employment with Wal-Mart on August 31, 2006. Her last day of work was March 22, 2010. She was terminated on March 22, 2010.

The incident that led to the claimant's termination occurred on March 19, 2010. The claimant inadvertently took a customer's car keys home when she left work at 3:00 p.m. The claimant was called at home and she discovered the keys as she was taking off her hoodie. The claimant returned the keys to the store by 3:40 p.m.

The claimant had had three prior disciplinary actions on January 26, 2010; February 16, 2009; and December 6, 2008. Because this incident on March 19, 2010, was her fourth write-up, she was terminated pursuant to the employer's policies.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors in judgment or discretion or negligence in isolated situations. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

There is no evidence of a current act of misconduct in this case. The claimant may have accumulated sufficient disciplinary actions to warrant termination under the employer's policies, but that does not equate to misconduct in this case. The claimant did not even realize she had the customer's keys when she left work on March 19, 2010. At best the evidence shows a simple act of negligence. The employer has not met its burden of proof to show that final incident leading to discharged was misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 12, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css