

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE B HEADINGTON
Claimant

APPEAL NO. 09A-UI-15918-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/23/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed a timely appeal from a representative's decision dated October 9, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 24, 2009. The claimant participated personally. The employer participated by Laetitia Vopava, Assistant Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Marie Headington was employed by Wal-Mart Stores, Inc. from August 16, 2006 until August 20, 2009 when she was discharged from employment.

The claimant most recently held the position of fitting room/telephone attendant on a full-time basis and was paid by the hour. Her immediate supervisor was Laetitia Vopava.

Ms. Headington left her employment with Wal-Mart Stores, Inc. after she reasonably believed that she had been discharged from employment based upon statements that had been made to her by the company's assistant manager. The claimant had been unsuccessful in her attempts to work as a zone worker and as a fitting room/telephone attendant. The employer was not satisfied with Ms. Headington's abilities and had informed the claimant that the position agreed to was not available. Because the claimant was receiving a third disciplinary action for unsatisfactory performance and had been told that no other jobs were available, she reasonably concluded that she was being discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional and culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Based upon the totality of the evidence in the record, the administrative law judge concludes that the claimant was discharged from employment after she was informed that her work was unsatisfactory and that no other positions were available to her at that time. The evidence in the record does not establish intentional disqualifying misconduct. The claimant did not have the skills or abilities necessary to perform her job to the level of competence expected by the employer. The claimant's discharge was, therefore, under no disqualifying reason. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 9, 2009, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs