

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATHEW K ABDULBAKI**  
Claimant

**APPEAL NO. 14A-UI-08539-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 07/06/14**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 11, 2014, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on an agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on September 8, 2014. Claimant Mathew Abdulkaki did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Lori Mullen represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-08540-JTT. Exhibits One through Five were received into evidence. The administrative law judge took official notice of the agency's record (DBRO) of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and determining whether the claimant engaged in fraud and/or dishonesty in connection with the fact-finding interview.

**ISSUE:**

Whether the claimant was suspended or discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mathew Abdulkaki was employed by Wal-Mart in Creston as a full-time overnight grocery stocker from July 2013 and last performed work for the employer on July 5, 2014. On that day, the employer suspended Mr. Abdulkaki without pay based on an allegation that Mr. Abdulkaki and a coworker had engaged in an argument that escalated to threats of violence. The employer did not make further contact with Mr. Abdulkaki until July 28, 2014, at which time the employer told Mr. Abdulkaki he could return to work.

Mr. Abdulkaki filed a claim for benefits that was effective July 6, 2014 in response to the indefinite suspension. Mr. Abdulkaki received \$960.00 in benefits for the five-week period of July 6, 2014 through August 9, 2014.

## 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The evidence in the record establishes that the employer discharged Mr. Abdulbaki effective July 5, 2014, when the employer placed Mr. Abdulbaki on an indefinite unpaid suspension. Mr. Abdulbaki reasonably concluded that he had been discharged. The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove that what the employer termed a suspension was based on misconduct in connection with the employment. The employer's sole witness had no personal knowledge about the matters in question. The employer had the ability to present testimony from witnesses with personal knowledge of the matters in question. The employer elected not to present such testimony.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Abdulbaki was discharged for no disqualifying reason. Accordingly, Mr. Abdulbaki is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The claims deputy's August 11, 2014, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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