

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA MATSON
Claimant

APPEAL NO. 08A-UI-03473-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES, INC
Employer

OC: 03/09/08 R: 03
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated March 28, 2008, reference 02, which held that Theresa Matson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2008. The claimant participated in the hearing. The employer participated through Kathy Anderson, Co-Manager. Employer's Exhibits One through Three were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from July 7, 1997 through March 7, 2008 when she was discharged. She was most recently working as an overnight customer service manager. The employer has a progressive disciplinary policy in which employees are discharged after verbal and written warnings, followed by a decision day or a one-day suspension. Depending on the severity of the policy violation, the employer can begin directly with a written warning.

The claimant received a written warning on July 21, 2007 when she left the podium closed but unlocked. She tried to lock the drawer but did not check to make sure it was locked and left \$2,000.00 unsecured from 1:30 a.m. to 6:00 a.m. The claimant reported the violation herself but still received a written warning. She was given a decision day on August 31, 2007 for not taking control of the cashiers. She needed to ensure there were sufficient cashiers on the registers in the early mornings since there were not enough registers open. She was found to have provided bad customer service and directed to complete a nightly routine of auditing her registers with no exceptions. The claimant was told to fix the problem but there were simply not enough cashiers to comply with the requirements and the claimant was advised she could not

pull associates off the floor to help with this problem. The claimant stated management was aware that there were not sufficient cashiers but the employer was not hiring.

Consequently, she and the other night manager took care of the problem by tricking the system. The claimant used other employees' personal passwords to sign them onto the registers even when they were not there. That satisfied the system requirements, fixed the problem and prevented any further bad ratings. The claimant contacted the ethics department about what she was doing and they said that it was not right but there was nothing specifically wrong with it. The claimant also spoke to a district member of management and was given the same answer. In order to trick the system, the claimant needed to use other employees' passwords, which is against policy. Employees are not allowed to have any other employee's password but the claimant said this policy is frequently violated and has been since she started work there.

About one month and a half prior to her discharge, the claimant was confronted by the loss prevention associate about what she and the other night manager were doing. The loss prevention associate told her to stop what she was doing and the claimant stopped. Even though she did nothing else wrong, she was discharged a month and a half later on March 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for violating policy, although her policy violations had stopped over one month prior to her discharge. 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). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated March 28, 2008, reference 02, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css