

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD D KRIENS**  
Claimant

**APPEAL NO. 06A-UI-10950-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC.**  
Employer

**OC: 10/01/06 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's November 7, 2006 decision (reference 01) that concluded Donald D. Kriens (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2006. The claimant participated in the hearing. Josh Brubaker, an assistant manager, 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 24, 2004. The claimant worked as a full-time overnight dairy stocker. Brubaker became the claimant's supervisor in July 2006.

On September 3, 2006, the claimant received a written warning for failing to meet the employer's standards or goal. The claimant had problems getting all the work done during his shift. The claimant asked for another employee to help him. On September 13, 2006, the employer gave the claimant his final written warning for unsatisfactory job performance or for not getting his work done at the speed the employer expected. The September 13 warning was the third time the employer talked to the claimant about performance issues in less than a month. The claimant had problems getting all the freight put away in addition to stocking and rotating product. During the September 13 discussion, the claimant indicated he had another job lined up and did not care about this job. In mid-September, the employer assigned another employee to help the claimant during the busy days.

The employer did not talk or at least document any warnings with the claimant about his job performance until October 4, when the claimant worked alone. Part of his job on this shift

required him to down stack some meat or take it off the top of a pallet, put it in a cart and take the meat to the meat department. The meat had to be down stacked so the claimant could put juice away that was underneath the meat. The claimant had 1.5 pallets to take care of that night, in addition to his other job duties. The claimant unloaded one pallet of product and left the half pallet so he could get his other work duties done. The claimant understood the employer was not satisfied with his work and wanted to get his primary job done. At 6:00 a.m. when the dairy manager came to work, she noticed the claimant had not taken care of the half pallet of product. The dairy manager reported that the claimant did not believe it was his duty to down stack meat with the other jobs he was required to complete. The claimant indicated that someone from the meat department should down stack the meat so he could get to the juice and put it away.

When the employer called the claimant to the office 10 or 15 minutes before his shift ended, the claimant was putting away the juice that was on the half pallet. Someone down stacked the meat, but the claimant did not know who. The employer discharged the claimant on October 4. The employer concluded the claimant refused to down stack meat and as a result again did not perform his job satisfactorily.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if his employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts show the claimant received three warnings about his job performance in less than a month. This occurred after new management started. After the third written and final written warning, the employer assigned another employee to help the claimant on busy days. The dairy manager was frustrated when she noticed the claimant had not put away freight that was on a half pallet when she came to work at 6:00 a.m. The dairy manager reported that the claimant refused to down stack meat on a half a pallet during the claimant's October 4 shift. Even though the claimant did not believe it was his responsibility to down stack the meat does not mean he would not have down stacked the meat. The claimant had down stacked meat in the past. The claimant may have used poor judgment when he decided to get his other job duties done before he unloaded the half pallet of product on October 4. He ultimately did not leave enough time to get this job completed by the end of his shift. The claimant acknowledged that he would have been unable to unload the half pallet between 6:00 and 7:00 a.m. When the employer called

the claimant to the office 10 to 15 minutes before the end of his shift, the claimant was putting away the juice that had been on the half pallet. An unknown employee down stacked the meat on the pallet.

The employer established business reasons for discharging the claimant. The claimant was not meeting the employer's standards or expectations. The evidence does not establish that the claimant committed work-connected misconduct. Even though the claimant indicated he did not care on September 13 because he had another job, there were no documented problems between September 13 and October 4. The facts indicate the claimant was trying to do his job satisfactorily. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's November 7, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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