

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OSCAR R MORALES
Claimant

WAL-MART STORES INC
Employer

APPEAL 18A-UI-02463-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 14, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failure to follow instructions. The parties were properly notified of the hearing. A telephone hearing was held on March 22, 2018. The claimant, Oscar R. Morales, participated. The employer, Wal-Mart Stores, Inc., participated through Jacob Murphy, Asset Protection Manager; and Kris Randolph, Personnel Coordinator. The administrative law judge took official notice of the fact-finding documentation.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a sales associate, from October 14, 2016, until June 16, 2017, when he was discharged for failing to provide the employer with proof of his social security number. The employer first spoke with claimant about this issue in December 2016, when it learned that there was an issue with his I-9 paperwork. Claimant did not produce his social security card at that time. The employer spoke with him multiple times over the course of the following six months about its need for him to provide proof of his social security number. On June 8, Murphy, Randolph, Store Manager Tony, and claimant had a meeting about this issue. The employer told him that he needed to bring in his social security card in order to continue his employment. When claimant objected that he could not get a physical social security card, the employer notified him that he could bring in a letter from the Social Security Administration stating his name and social security number on it. Claimant then objected that he would have to go back to Chicago to get this letter, and the employer reminded him that there is a Social Security Administration office in Coralville where he could get the letter. Claimant was told he had one week to provide proof of his social security number. Claimant acknowledged this deadline and indicated he understood his job was in jeopardy if he could not provide the documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer provided credible testimony regarding the end of claimant's employment.

Claimant did not credibly rebut employer's reason for the separation. Claimant was not able to prove to the employer that his name and social security number matched, despite multiple opportunities. The employer has a vested interest in ensuring that all individuals it employs are legally authorized to work in the United States. Claimant's refusal to provide the employer with proof of his social security number amounts to a disregard of a clear work directive, and it is disqualifying misconduct even without prior written warning. Benefits are withheld.

DECISION:

The February 14, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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