

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAHJO ALDERETE
Claimant

APPEAL NO: 12A-UI-08335-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06-26-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 9, 2012, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 13, 2012. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Wal-Mart from July 31, 2011 to June 19, 2012. On June 15, 2012, the claimant misread her schedule and called her supervisor to let her know she would be a few minutes late. Her supervisor told her she was on her "list" to be talked to about being laid off for six weeks and rehired after that time. The claimant believed her placement on any list was a mistake and asked her supervisor to double check the list. Her supervisor told her to call back after 5:00 p.m. and that if she came in for her shift that day she would be sent home and scheduled for rehire in six weeks. She called her supervisor after 5:00 p.m. but was told she had not checked the list yet. The claimant asked if she would please check the list at that time and when her supervisor did so she discovered the claimant was not on the list as the supervisor originally believed. The claimant then worked her scheduled shifts June 17 and 18, 2012, and was called into a manager's office at the end of her shift June 18, 2012. The manager stated he had been told the claimant was absent June 15, 2012, and he was supposed to terminate her employment but wanted to hear the claimant's side of the story. The claimant explained what happened with her supervisor and the list June 15, 2012, and that she was effectively told if she came in June 15, 2012, she would just be sent home and recalled for rehire in six weeks. The manager stated he would speak to her supervisor and confirm her account of the incident and get back to her that evening. He did not call her that night so the claimant arose early June 19, 2012, and called the employer and was told she should come in for her regularly scheduled shift. After working for about one hour, the manager and another

manager met with the claimant and told her that her supervisor denied their conversation June 15, 2012, and consequently her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was told by her supervisor she would be sent home if she showed up for work June 15, 2012, because she was on the list to be sent home and scheduled for rehire in six weeks. The claimant urgently questioned her inclusion on the list and if her supervisor checked it before telling the claimant she was on it, the claimant would have worked her shift June 15, 2012. It is unreasonable to expect the claimant would have gone in to work June 15, 2012, under those circumstances. She was then discharged after her supervisor failed to confirm what she told the claimant June 15, 2012, and the employer considered her absence unexcused. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the

claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has failed to meet its burden of proof. Therefore, benefits are allowed.

DECISION:

The July 9, 2012, reference 04, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs