

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L JOHNSON**  
Claimant

**APPEAL NO: 07A-UI-03526-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 03/04/07 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's March 22, 2007 decision (reference 01) that concluded Jessica L. Johnson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had not been discharged for a current act of work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2007. The claimant participated in the hearing. James Johnson, Jr. was available to testify. Troy Wygle, the assistant manager, appeared on the employer's behalf. Nora Smith was available to testify 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 a current act of work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 18, 2005. The claimant worked as a full-time overnight stocker. Wygle was the claimant's supervisor.

On April 23, 2006, the claimant received a final written warning or a "Decision Day" to decide if she wanted to put forth the effort to improve her performance and remain employed. The next disciplinary step after a Decision Day is termination. The evening of February 13, a support manager asked the claimant to fill features. The claimant refused to do this job because this was the support manager's job and the claimant saw him wasting time before he told the claimant to do this job. The claimant felt this task should have been done by the support manager before. The claimant told the support manager she would rather quit than do his job.

The support manager immediately reported the incident. Wygle then talked to the claimant about what had happened and why. Wygle decided to discharge the claimant because she had previous warnings and she already had her decision day warning. Wygle confirmed with corporate that the claimant should be discharged. Shortly after deciding to discharge the

claimant, Wygle went on vacation. Although he was at the store working a few times during his vacation and the claimant saw him at work, Wygle did not say anything to the claimant. On March 7 after Wygle returned from his vacation, he discharged the claimant for the February 13 incident.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

On February 13, 2007, the claimant's refusal to follow a reasonable request amounts to insubordination. The facts establish the employer knew about the claimant's insubordination on February 13 and the employer made the decision to discharge the claimant that day or within a couple of days. The employer did not establish any justifiable reasons for not telling the claimant she was discharged for over three weeks. Ultimately, the employer discharged the claimant on March 7 for an incident that does not constitute a current act. As a result, the claimant is not disqualified from receiving unemployment insurance benefits. As of March 4, 2007, the claimant is qualified to receive benefits.

### **DECISION:**

The representative's March 22, 2007 decision (reference01) is affirmed. The employer discharged the claimant for an incident that does not constitute a current act of work-connected misconduct. Therefore, as of March 4, 2007, the claimant is qualified to receive unemployment

insurance benefits, provided she 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

dlw/pjs