

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI VICK
Claimant

APPEAL NO: 14A-UI-07005-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/08/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 30, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer 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 full-time customer service manager for Wal-Mart from August 3, 1999 to June 10, 2014. She was discharged after she began crying because she only received a three-minute break and her assistant refused to help her with a task.

The claimant worked the 10:00 p.m. to 6:30 a.m. shift. On June 10, 2014, there were only two cashiers on the claimant's shift. She shut down the register to change them out, but did not shut them down, and went to break because the assistant manager or support manager were supposed to cover for her but both were in the break room. The claimant was on break for three minutes when a cashier came to the break room because a customer came in with his paycheck and needed loan money. Customers can present their paychecks at Wal-Mart and have them cashed. Because the claimant had changed them out, however, there was not enough money to cover the paycheck. The claimant then needed to borrow money from the cash office and asked an assistant store manager, Gary, to go get it but he refused to do so and consequently she was only allowed three minutes for break. The claimant went and retrieved the money from the podium where the employer keeps change and other bills. The claimant called Gary three times for help but he refused to come and help her each time. Another customer then arrived

with his paycheck and the claimant had to use a different register. The fourth time the claimant requested help from Gary he did show up because the claimant had to use another register and she surmised he did not “want to get in trouble” at that point. The claimant returned to work without finishing her break. The claimant later went on her lunch break and after it concluded she went to speak to Gary, who was working in the sporting goods department. They walked to the assistants’ room and the claimant asked for Ken to be present while they talked but Gary said no because Ken was still on his lunch break. The claimant was “venting” to Gary and was upset because Gary refused to sign her sick leave from the week before. The claimant started crying and Gary stated, “You have been fighting this long enough. You should just turn your stuff in.” The claimant said she did not want to quit because she loved her job and co-workers. The claimant walked out of the assistants’ office and then Gary told her to clock out and turn her company property in. The claimant did as she was told and left.

On June 10, 2014, the claimant called human resources around noon when she woke up and told the human resources manager she did not want to quit her job. The human resources manager indicated she would get back to the claimant but when the claimant had not heard from her by June 13, 2014, she called the store manager and was told she could not return because she walked out of the store during her shift.

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.

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 employer has the burden of proving disqualifying misconduct. 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 had no intention of quitting her job but was instructed to go home by Assistant Store Manager Gary during the early morning hours of June 10, 2014, and was not allowed to return. 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 or dishonesty 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. Consequently, the administrative law judge concludes the employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The June 30, 2014, reference 01, 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

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