

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LENNY D BUTTZ
Claimant

APPEAL NO: 18A-UI-07831-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 06/10/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 16, 2018, 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 August 13, 2018. The claimant participated in the hearing. Priya Robinson, Assistant Manager, participated in the hearing on behalf of the employer.

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 cart pusher/maintenance employee for Walmart, Inc. from January 22, 2008 to June 20, 2018. He was discharged for refusing to follow the instructions of the assistant store manager after accumulating three written warnings in a 12 month period.

On June 10, 2017, the claimant received a written warning for disrespect to a co-worker after a female employee purchased a new shirt to put on at work and the claimant reached for the price tag/sticker on the shirt near her breast. The female co-worker told the claimant “No” but his actions made her uncomfortable.

On May 5, 2018, the claimant received a written warning safety/safe work practices/job performance after he was pushing ten carts in the parking lot without a tow strap cart pushers are required to use if they are pushing more than five carts and the claimant hit a pickup truck that stopped in the parking lot to let a customer out. The claimant damaged the truck and the employer had to turn the incident into its insurance company.

As part of his duties the claimant was required to clean the restrooms. On June 20, 2018, the restrooms were still dirty after the claimant said he already cleaned them. The customer service manager checked the restrooms and found they were unacceptable and instructed the claimant to redo them. The claimant stated, “I’m not fucking doing it. I did it once already.” Assistant

Store Manager Priya Robinson asked the claimant to clean the restrooms again because while he had put toilet paper and paper towels in the bathrooms, he had not cleaned them. The claimant stated, "No. I don't have enough time to clean." Ms. Robinson told the claimant he needed to go do it but he said, "No. Find someone else." Ms. Robinson asked him if that meant he was not returning to work and the claimant said no but he was only going to push carts from that day forward. Ms. Robinson reminded him that his job description required him to clean the restrooms as well as push carts and the claimant again stated he did not have time. Ms. Robinson told the claimant it was very important to clean and sanitize the restroom and the claimant stated, "I'm not doing it" and walked away. Ms. Robinson gave the claimant time to calm down and then called him to the office. While reviewing his file she discovered he had received three written warnings during the previous rolling 12 months and as a result she was required to terminate his employment. The employer's system eliminates written warnings more than 12 months old and while the first written warning has since been eliminated from the employer's system it was there June 20, 2018. When the claimant reported to the office after refusing to clean the restrooms, Ms. Robinson notified him that his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. IDJS*, 373 N.W.2d 507 (Iowa App. 1985). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant received three previous warnings in the preceding 12 months prior to his termination. On June 20, 2018, the claimant refused to clean the restrooms to the employer's standards despite being told to do so by the customer service manager and assistant store manager. He also stated his intent not to clean the restrooms in the future, saying he was only going to push carts.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The July 16, 2018, reference 01, decision is affirmed. The 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn