

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANNA ELMORE

Claimant

APPEAL NO. 09A-UI-16389-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

Original Claim: 10-04-09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 22, 2009, 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 December 7, 2009. The claimant participated in the hearing. Sonya Jarvis, 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 sales associate/cashier for Wal-Mart from October 15, 1997 to September 27, 2009. The claimant was scheduled to work at 8:00 a.m. September 27, 2009, but showed up for work at 7:00 a.m. She asked Co-Manager Ray Scott if she could clock in early and he asked when she was scheduled and whether Assistant Manager Sonya Jarvis had approved her starting one hour early and when the claimant said “no,” Mr. Scott said she would have to wait to start at 8:00 a.m. After he went in the office and closed the door, she clocked in anyway and Charlie Parsons, her department manager, showed her how to clock in to make it look as if she had manager approval. Mr. Scott became aware of the situation and notified Ms. Jarvis, who verified the time the claimant clocked in, and then Mr. Scott called the head of personnel for that store and was told to discipline the claimant for insubordination. The claimant received a verbal warning for insubordination February 14, 2009; a written warning for attendance April 27, 2009; and a decision making day for attendance May 6, 2009. The only disciplinary step remaining for the employer was termination.

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:

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 claimant testified she was told by a co-manager not to clock in early September 27, 2009, but did so anyway when a department manager showed her how to make it look like she had permission. She acknowledges that the co-manager has more authority than a department manager but still chose to clock in despite being told she could not do so by the co-manager because she was not scheduled to start at that hour and had not received permission from an assistant manager. 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 October 22, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw