

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKY HUGHES

Claimant

APPEAL NO: 16A-UI-10575-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01/31/16

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 15, 2016, reference 09, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 12, 2016. The claimant participated in the hearing. Jason Williams, Assistant Manager and Christine Waldburger, Personnel Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

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: A disqualification decision was mailed to the claimant's last-known address of record on September 15, 2016. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 26, 2016. The appeal was not filed until September 29, 2016, after the claimant called the Department twice and was then told she was denied benefits and could file an appeal. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time sales clerk for Wal-Mart from June 13, 2015 to August 26, 2016. She was discharged for not working her scheduled hours.

The claimant was scheduled to work from 8:00 a.m. to 5:00 p.m. She was on a medical leave of absence from the beginning of June 2016 through the end of July 2016. When she returned she was not on the schedule and started working 7:00 a.m. to 4:00 p.m. because she found she could get more work done during those hours. The employer asked the claimant why she was not working 8:00 a.m. to 5:00 p.m. and she explained her reasoning. She understood her manager to state he would override the schedule so it would show her correct hours and

consequently the claimant believed she could continue working the 7:00 a.m. to 4:00 p.m. schedule.

The claimant was scheduled to interview for a similar position in her department August 30, 2016. On August 25, 2016, the claimant told her manager he would need to override her schedule again and he agreed but on August 26, 2016, he terminated her employment.

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 § 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).

There was a misunderstanding between the claimant and her manager about her hours. The claimant continued working eight hour shifts but started going in at 7:00 a.m. instead of 8:00 a.m. when she returned from a medical leave of absence and was no longer on the schedule. The employer could not state the dates this occurred and did not issue the claimant any verbal or written warnings about her hours. The claimant believed her manager was overriding her scheduled hours and she could continue working the 7:00 a.m. to 4:00 p.m. schedule, not realizing the employer was assessing her attendance points for leaving early until her termination.

When the claimant continued working the 7:00 a.m. to 4:00 p.m. schedule, acting unknowingly against the employer's wishes, it seems only fair that the employer would make it clear to her that her actions were unacceptable and she was going to receive attendance points and lose her job if she continued working those hours. The employer failed to communicate that to the claimant, however, which resulted in her termination.

Under these circumstances, the administrative law judge finds the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 15, 2016, reference 09, 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/rvs