

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL MCCALL

Claimant

APPEAL NO. 10A-UI-11789-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 06-27-10

Claimant: Respondent (1)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 10, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 7, 2010. The claimant participated in the hearing. Kim Stokes, 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 bakery associate for Wal-Mart from July 31, 2007 to June 23, 2010. She was discharged for alleged time theft. The employer was alerted by a co-worker on an unknown date that the claimant was changing the times on her time card. On June 1, 2010, she arrived at 4:05 a.m. and changed it to 4:02 a.m. The employer has a 15-minute grace period, so there was no advantage to the claimant to change the time. On June 2, 2010, she changed it from 4:27 a.m. to 4:07 a.m. There was a change June 7, 2010, from 4:10 a.m. to 4:05 a.m. and again June 9, 2010, from 4:27 a.m. to 4:06 a.m. The final incident occurred June 14, 2010, when her time card was changed from 4:08 a.m. to 4:01 a.m. The store and shift manager spoke to the claimant about it and she reportedly admitted changing her time. During the hearing, the claimant testified that the employer got a new time clock a few months earlier and it acts up sometimes when the card is punched. It beeps the same whether or not the punch is taken. The claimant would push the button and walk away but then see later that the time clock reported the punch was missed and she would go back and put in what time she believed she arrived and thought she was putting in the correct times. The employer told her since she was such a good worker, it was only going to issue her a written warning. However, when she reported to work June 23, 2010, the employer terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for disqualifying job 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 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). Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant was discharged June 23, 2010, for purported time theft, but she denies all wrongdoing. The employer could not offer a firsthand witness and could not establish the claimant intended to commit time theft. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 10, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw