

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY J REITER
Claimant

APPEAL NO: 12A-UI-01926-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/15/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 23, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant responded to the hearing notice, but was not available for the hearing when she was called. The claimant did not respond to the message left for her by the administrative law judge. Michelle Siebel, the grocery department assistant manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2010. The claimant worked full-time. In August 2011, the employer transferred the claimant to the dairy department.

During her employment, the claimant received some written warnings. On October 25, 2011, the claimant received her final written warning or a Decision Day for on-going attendance issues and her disrespectful attitude toward management. The employer warned the claimant that if she had one more violation after her Decision Day, she could be discharged.

On October 28, 2011, Siebel gave the claimant a verbal warning instead of discharging her when she violated the employer's cell phone policy. Employees are allowed to use cell phones when they are on a break, but not while they are working. On November 5, Siebel heard the claimant yelling at her supervisor and being disrespectful. The claimant and her boyfriend had an argument. During her shift, the claimant repeatedly went to the restroom to use her cell phone to contact her boyfriend. Siebel heard the claimant tell her supervisor that she, the claimant, did not have to listen to her and that she could use her cell phone when she wanted to.

After hearing the claimant say this, Siebel talked to the claimant in her office. The claimant admitted she had been using her cell phone in the restroom because of problems she had with her boyfriend. The employer discharged the claimant on November 5. The employer discharged the claimant because she again knowingly violated the employer's cell phone policy after being warned on October 28 that her job was in jeopardy if she again violated the cell phone policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes the claimant knew or should have known her job was in jeopardy on October 28 when the employer gave her a break and did not discharge her for violating the employer's cell phone policy. On October 28, the employer warned the claimant that if she used her cell phone again during work, she would be discharged. The fact the claimant and her boyfriend had problems on November 5 does not excuse her conduct and decision to intentionally violate the employer's cell phone policy while she was working. The claimant committed work-connected misconduct on November 5, 2011.

DECISION:

The representative's February 23, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of November 5, 2011, the claimant is not qualified to receive benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw