

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEBRA S CUNNINGHAM
1420 LINCOLN BLVD
MUSCATINE IA 52761

WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11647-SWT
OC: 10/03/04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 19, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 22, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Janet Haskell participated in the hearing on behalf of the employer with a witness, Troy Wygle.

FINDINGS OF FACT:

The claimant worked as a sales associate in the grill from November 11, 2003, to September 30, 2004. The claimant was informed and understood that under the employer's work rules, an associate who refused to provide a written plan of action after receiving a decision-making day would be subject to termination. Troy Wygle was the claimant's supervisor.

The claimant received a verbal coaching on July 31, 2004, for poor customer service. She received a written coaching on September 18, 2004, after she complained in front of customers and coworkers about a customer who had changed the time for picking up a large order of chicken.

On September 24, 2004, the claimant commented to other sales associates that if God struck Wygle down, she would jump for joy. She was upset by what she considered was Wygle's harsh treatment of her. The claimant was given a decision-making day by Wygle for this conduct, which was considered insubordinate and a violation of the company policy requiring employees to respect other supervisors and coworkers. A decision-making day is considered a final warning and requires an employee to write a letter containing a plan of action if the employee desires to continue in employment.

The claimant wrote a letter with a plan for improvement but forgot to bring it on the next day the claimant was scheduled to work after the decision-making day. She explained this to Wygle and offered to go home and retrieve it. Wygle would not allow it, and he discharged the claimant on September 30, 2004, for refusing to bring in the plan of action.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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, (8) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

While the employer may have been justified in discharging the claimant, no current act work-connected misconduct as defined by the unemployment insurance law has been established in this case. In the end, the reason why the claimant was discharged was for allegedly refusing to bring in the plan of action. The evidence, however, establishes that the claimant did not refuse to prepare or bring in the plan of action; she forgot to bring in it. No willful misconduct has been proven regarding the reason for her discharge.

DECISION:

The unemployment insurance decision dated October 19, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc