

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NEAL B DEBUHR
Claimant

APPEAL 16A-UI-08085-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/19/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 21, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit after failing to report to work without notice for three consecutive days. The parties were properly notified of the hearing. A telephone hearing was held on September 1, 2016. The claimant Neal DeBuhr participated and testified. The employer Wal-Mart Stores Inc. participated through Assistant Manager Christopher Suell.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a cashier from September 9, 2015, until this employment ended on June 14, 2016, when he was discharged from employment.

On May 17, 2016, claimant submitted a request to have several days in June off work. Claimant was a full-time student and needed these days off to take his finals. On May 26, 2016, claimant was notified that Store Manager Dawn Walsh had denied all of his time off requests. Claimant then took the issue to one of Walsh's supervisors, who directed him to Brian Koopmann in the corporate Human Resource Department. Claimant explained the situation to Koopmann, who agreed that, under the employer's policies, his requests for time off should have been granted. Koopmann told Claimant he would speak to Walsh and instruct her to approve his requests. Later that same day, Koopmann phoned claimant to let him know he had spoken to Walsh and mandated she grant his requests. Claimant then received a voicemail from Walsh asking him to remind her of what days he needed off for finals. Claimant attempted to call Walsh back four times, but she was not available any time that he called. Claimant spoke to the customer

service manager on duty, who told him that since he had entered the dates in the system Walsh would have a record of what days he needed off for finals and she should be able to refer to those records.

Believing his time off requests had been approved, claimant did not go in to work on June 9, 11, or 12, 2016. For some unknown reason the time off requests were not approved in the system by Walsh and claimant was counted as a no-call/no-show for those dates. The employer has a policy in place which states after three consecutive no-call/no-shows employees are deemed to have abandoned their jobs and are separated from employment. On June 14, 2016, a letter was sent to claimant informing him that he had been separated from employment. Claimant was unaware that his time off requests had not been approved as instructed by Koopmann until he received this letter. Claimant had no prior issues with his attendance and was previously unaware that his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit but was discharged from employment for no disqualifying reason.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Here, the claimant requested time off work, but his request was denied. Claimant then spoke with an individual in the Human Resource Department, who informed him that his time off requests for the days in question had been approved. Claimant has provided sufficient evidence that he had a good faith belief that his time off requests had been granted. Inasmuch as claimant believed his requests had been granted, he is not considered to have quit but was discharged.

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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged for not coming to work on several dates which he was told he had been granted off. Claimant believed he had been granted the time off after being told as much by Koopmann. Claimant's reliance on Koopmann's statements was reasonable under the

circumstances. The employer has not presented any evidence that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

DECISION:

The July 21, 2016, (reference 01) unemployment insurance decision is reversed. Claimant did not voluntarily quit, but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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