

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY R HILTON
Claimant

APPEAL NO. 11A-UI-00009-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10-10-10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 20, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 9, 2011. The claimant did participate. The employer did participate through Matt Buss, Asset Protection Manager. Employer's exhibit one was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an overnight stocker full time beginning in 2006 through July 2, 2010 when he was discharged. Prior to July 2 the claimant took what he believed was a damaged box of ice cream, opened it and ate some of it while he was working. Prior to eating the ice cream the claimant did not pay for it, nor did he ask a supervisor or manager if he could eat the product. The claimant had been trained that he was to pay for any product before consuming it. Additionally the claimant had been trained that he was not to set aside any product for himself. All products were to be put on the shelf for members to purchase. Before starting his work shift on July 2, the claimant went into the store and paid for the opened partially eaten box of ice cream. When he did so, one of the other employees alerted management to what had occurred.

When the claimant arrived at work at 9:00 p.m. that night he was called into the office where he met with Matt Buss and Nicole Cross, Assistant Manager. The claimant admitted that he had taken a box of ice cream, set it aside, and eaten some of it prior to purchasing it. The employer considers such behavior "under stocking" and a violation of their policies. Like theft of company product, under stocking is an activity for which the employer discharges on the first occurrence. The claimant knew that he was not to eat damaged product. The claimant was obligated to follow the employer's procedures, not to decide for himself how to help the employer make money.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew that he was not to eat any product prior to paying for it. He did not have permission to take the damaged box of ice cream, secret it away in a cooler, eat it and then pay for it. The claimant had been trained on the employer's policies and his refusal to follow them is misconduct to such a degree as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The December 20, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css