

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAWRENCE E LEE**

Claimant

**APPEAL NO. 10A-UI-15224-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 09/26/10**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 21, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for an incident that was not a current act of work-connected misconduct. The claimant participated in the hearing with his attorney, Dirk Hamel. Pat McNickel represented the employer. Elena Rocha, the assistant manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for a current act of work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in December 1993. He worked as a part-time maintenance employee. He knew and understood the employer's violence in workplace policy prohibited employees from fighting at work and if an employee violated this policy, he would be discharged.

When the claimant punched in for work on September 24, a co-worker, D., was right behind him. As a joke, D. pulled on the claimant's suspenders when he punched in for work. The claimant immediately turned around. As the claimant spun around, D. was hit in the jaw and fell to the floor. The claimant did not know who had pulled his suspenders and both men were surprised by the claimant's reaction. As soon as D. fell to the ground, the claimant helped him back on his feet. The claimant and D. did not have any problems together. They had a tendency of joking around with one another. They did not have any problems working on September 24. Prior to September 24, the claimant's job was not in jeopardy.

An employee reported the claimant and D. had been in a fight by the time clock. D. told the employer he had started the incident by pulling on the claimant's suspenders. D. intended his actions as a joke. When the employer talked to the claimant, he admitted he hit D., but did not

consider the incident as a fight. The claimant tried to explain that he basically had a “knee-jerk” reaction before he realized D. was behind him.

The employer’s ethics department received the report about the incident. Someone in the corporate office made the decision to discharge the claimant on September 30 for the September 24 incident between the claimant and D. D. was not discharged, because he had not hit the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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. 871 IAC 24.32(8).

Discharging the claimant on September 30 for a September 24 incident constitutes a current act. The question that must be decided is whether the claimant committed work-connected misconduct. 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 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).

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 facts show the claimant and D. got along at work. The claimant’s job was not in jeopardy before September 24. Even though D. was hit and fell to the floor, the claimant’s reflex reaction does not rise to the level of work-connected misconduct. He did not intentionally disregard the employer’s interests even though he clearly understood the employer’s policy. As soon as the claimant realized what had happened, he helped his co-worker to his feet. They did not fight.

While the employer established justifiable business reasons for discharging the claimant, based on the facts of this case, the claimant did not commit work-connected misconduct. As of September 26, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 21, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 26, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw