

**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**

**SUSAN RESENE  
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PO BOX 332  
EARLY IA 50535**

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

**Appeal Number: 04A-UI-03002-ET  
OC: 01-18-04 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 4, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 7, 2004. The claimant participated in the hearing with witness/customer Mary Bridges. Sue Warner, Assistant Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cashier for Wal-Mart from March 15, 2003 to October 3,

2003. The claimant was originally hired to work in the pet department and had been moved to a cashier position in approximately September 2003 because the employer was short-handed. On October 3, 2003, a customer presented a coupon from another store and the claimant had to call for assistance because she was not sure how to enter the coupon in the register. Manager Trainee Cody Katzner came to the claimant's register and said she should know how to do the ad. Customer Mary Bridges was next in line and described Mr. Katzner as "belligerent." The claimant was in tears after dealing with Mr. Katzner and he told her that she was fired. Mr. Katzner told the employer the claimant used profanity on the floor but both the claimant and Ms. Bridges denied the claimant did so. The employer testified the claimant quit by walking off the job.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the employer stated the claimant quit by walking out, the claimant and Ms. Bridges credibly testified Mr. Katzner terminated the claimant's employment after she asked for assistance and he became upset that she did not know how to do the task and then treated her poorly. The employer's witness was not present during the exchange between the claimant and Mr. Katzner and the claimant and Ms. Bridges refuted her allegations with first-hand testimony regarding the incident. Consequently, the administrative law judge concludes the evidence establishes the employer terminated the claimant's employment for no disqualifying reason. Benefits are allowed.

DECISION:

The March 4, 2004, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b