

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TASHA J CLINKENBEARD**  
Claimant

**APPEAL NO. 11A-UI-12962-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 08/21/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 22, 2011, reference 02, which denied unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 25, 2011. The claimant participated. Participating as witness for the claimant was Tammie Gorngren, the claimant's mother. Although duly notified, the employer did not participate.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Tasha Clinkenbeard was employed by Wal-Mart Stores Inc. from June 15, 2011 until August 15, 2011 when she was discharged by the employer. Ms. Clinkenbeard held the position of part-time sales associate and was paid by the hour.

On August 5, 2011 Ms. Clinkenbeard underwent surgery. Due to complications with the medical procedure the claimant was unable to return to work by the expected date. Although the claimant informed Wal-Mart Stores that she had not been fully released and was still under the care of her physician, she nonetheless was discharged from employment on August 15, 2011 because she could not report with a full release that date.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the evidence in the record establishes that the claimant was discharged by the employer for no disqualifying reason. The claimant had kept the employer informed of her medical status specifically telling the employer that she had not been fully released by her physician due to complications with a medical procedure that had taken place on August 5, 2011. When the claimant could not meet the employer's requirement that she be fully released by August 15, 2011, she was discharged from employment.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint intentional disqualifying misconduct on the part of the claimant has not been shown. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 22, 2011, reference 02, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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