

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE R CONNETT
Claimant

APPEAL 15A-UI-14115-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 11/29/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 18, 2015 (reference 01) unemployment insurance decision that denied benefits based upon her discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2016. Claimant Jamie Connett participated and testified. Employer Wal-Mart Stores Inc. participated through co-manager Sarah Scott and asset protection manager Jolene Aberle. Employer's Exhibits E-1 through E-3 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a customer service manager from June 24, 2014 and was separated from employment on December 2, 2015; when she was terminated.

On November 24, 2015, one of the employer's customer service managers went to a cash podium to get change for a cashier and noticed the drawer, containing over three thousand dollars in cash, was unlocked. The employee immediately reported what she had found to a manager and an investigation into the matter began. During this investigation Aberle discovered, through watching surveillance video, that claimant was the last employee to access the drawer and, therefore, must have been the one who left it unlocked. The employer's policies dictate that employees with keys are responsible for their keys and for locking any drawers they access. Claimant was aware of this policy through her training and a document outlining this policy that she had signed. Claimant believed she had locked the drawer but admitted she did not double check to make sure the drawer was locked.

Prior to November 24, 2015, claimant had received written warnings for similar conduct on two prior occasions. On July 3, 2015, claimant received a second written warning for leaving cash bags unsecured on June 1, June 15, and July 2, 2015. Due to the number of violations and the amount of cash that was left unsecured, the employer skipped the normal first written warning and went straight to a second written warning. The July 3 warning advised claimant that future policy violations may result in a third written warning or termination. On November 16, 2015, claimant was given a third written warning for leaving money from a cash register she had pulled unsecured. This written warning indicated that the next level of action would be termination. The November 24 incident was the next violation. Based on the number of policy violations the claimant had and the amount of money involved, the employer determined that the proper disciplinary action was termination.

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. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, the claimant was given at least two written warnings regarding the importance of making sure cash was secure prior to her termination. She received one of these warnings after three incidents occurred within an approximately one month time period. The next warning claimant received was given to her just nine days prior to the final incident and clearly stated that the next disciplinary step would be termination. Claimant herself admitted she understood that any further violation would result in her termination. Claimant also admitted that she understood the employer's policies' regarding ensuring cash was secured. While it is likely true that claimant was not deliberately engaging in this misconduct, it is also true that her actions violated clear company policies, and that she committed the same violations on numerous occasions.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Claimant's repeated instances of leaving cash unsecured is disqualifying misconduct. Benefits are denied.

DECISION:

The December 18, 2015 (reference 01) unemployment insurance 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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