

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JON E WATERS**

Claimant

**APPEAL NO. 12A-UI-00802-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 12/11/11**

**Claimant: Respondent (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 12, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 16, 2012. Claimant participated. Dennis Price, hardlines assistant manager, represented the employer. Exhibits One through Five were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jon Waters was employed by the Davenport Sam's Club as a full-time deli team leader until December 14, 2011, when the employer discharged him from the employment. Dennis Price, hardlines assistant manager, and another manager, Robert Metcalf, carried out the discharge.

The final incident that triggered the discharge occurred on December 9, 2011, when Mr. Waters failed to fill out a chiller log regarding when he had placed cooked chicken into the chiller. Mr. Waters had generated one set of required documentation, but forgot to transfer the information onto the chiller log. Mr. Waters was responsible for making certain that the two different forms of documentation were completed either by him or by an employee under his supervision. Mr. Waters was subject to discipline if the chiller log was not filled out four times during a rolling six-month period.

The next most recent matter that factored into the discharge was the employer's discovery in June 2011 that the 52-week file that the employer maintained for public health and liability issues was missing several weekly reports. This was discovered during an audit. Though Mr. Waters was the person ultimately responsible for maintaining the 52-week file, he was not the only employee responsible for moving documentation to the 52-week file and was not the only employee with access to the documentation maintained there. The employer issued a

decision-making day—a day for Mr. Waters to contemplate whether he wished to continue in the employment and the changes he needed to make to be successful in the employment.

In making the decision to discharge Mr. Waters, the employer considered a reprimand issued to Mr. Waters in December 2010, for allegedly failing to maintain the cleanliness of a display case and alleged failure to change some burned out bulbs. The employer also considered a verbal coaching issued in September 2010 for allegedly leaving work without properly labeling or stocking product. Mr. Waters had properly labeled and stocked product before leaving that day.

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

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether

the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct. The employer presented no testimony from anyone with personal knowledge of the conduct that factored into the discharge. The employer had the ability to present such testimony. The weight of the evidence indicates that Mr. Waters was careless on at least one occasion in failing to transfer information on the chiller log. Despite this omission, Mr. Waters had generated the primary documentation to ensure food safety. There is insufficient evidence in the record to establish that Mr. Waters was the person to forget four times with a six-month period to transfer the information, versus another employee with the same duties failing to transfer the information. The employer has failed to present sufficient evidence to establish that Mr. Waters did something, or omitted something, to cause the 52-week log to be incomplete. The evidence indicates that multiple individuals were responsible for transferring information to that filing system and that even more had access to it. The employer has failed to present sufficient direct and satisfactory evidence to establish that Mr. Waters was careless or negligent in connection with the two earlier matters that resulted in coaching incidents.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Waters was discharged for no disqualifying reason. Accordingly, Mr. Waters is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Waters.

**DECISION:**

The Agency representative’s January 12, 2012, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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