

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHYRN R BENZ**  
Claimant

**APPEAL NO. 09A-UI-00981-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/28/08 R: 04**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated January 20, 2009, reference 01, which denied benefits based upon her separation from Wal-Mart Stores. After due notice was issued, a telephone conference hearing was scheduled for and held on February 9, 2009. Ms. Benz participated personally. Although duly notified the employer did not respond to the hearing notice and did not participate.

**ISSUE:**

The issue in this matter is whether the evidence in the record establishes that the claimant was discharged for intentional misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from November 19, 1997 until December 22, 2008 when she was discharged from employment. Ms. Benz was employed as a full-time greeter and was paid by the hour. Her immediate supervisor was Dan Davis.

The claimant was discharged for inadvertently stating the word "shit" when told of her work location by a fellow worker. The claimant inadvertently uttered the statement unintentionally. Ms. Benz had not been previously warned or counseled for similar conduct and had an unblemished employment record.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes intentional disqualifying misconduct on the part of the claimant. It does not.

The evidence in the record establishes that the claimant was discharged based upon a single incident when she inadvertently uttered an unacceptable word. The administrative law judge finds this to be an isolated incident of poor judgment in an otherwise unblemished employment

record. Sufficient evidence of intentional disqualifying misconduct on the part of the claimant has not been shown.

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.

**DECISION:**

The representative's decision dated January 20, 2009, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. 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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