

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

PAUL SCHLEIGER

Claimant

APPEAL NO. 18A-UI-03078-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART STORES INC

Employer

OC: 02/18/18

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Paul Schleiger (claimant) appealed a representative's March 5, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Walmart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 2, 2018. The claimant participated personally. The employer participated by Lisa Macko, Human Resources Manager, and Patricia Hemsley, Co-Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 3, 2008, as a full-time cart pusher. The employer has a handbook but the claimant did not receive it. The handbook contained the employer's attendance policy. On February 28, 2016, the claimant signed for receipt of the Personal Associate Summary Sheet (PASS) – Hourly Associates document. One section addressed changes to the attendance policy. The document stated that an employee would be terminated if he accumulated nine occurrences within a six-month rolling period. The employer did not issue the claimant any warnings during his employment.

The claimant was absent on September 13, December 10 and 13, 2017, for unknown reasons. On October 15, 2017, the claimant was absent due to illness. He almost went in a ditch due to inclement weather on February 10, 2017, and called off work. He accumulated five occurrences for these absences.

Frequently, the employer asked the claimant to cut his hours so as not to work too many hours in a pay period. On October 21, December 6, and 9, 2017, the employer cut the claimant's hours, sent him home early, and assessed him points. On August 25, 2017, the claimant talked

to his supervisor for a few minutes and clocked in late to cut his hours for the week. The claimant was assessed 2.5 points in the effort to lower the claimant's hours.

On February 11, 2018, the claimant asked the co-manager for a leave of absence for personal reasons. The employer did not feel the reasons warranted time off and refused. The claimant properly reported his absences on February 14 and 15, 2018. On February 16, 2018, the employer terminated the claimant for accumulating nine attendance points in six months.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Following the employer's instructions to leave work is an excused absence. An employer who sends employees home and then counts the absences as occurrences is shocking. The employer did not provide

sufficient evidence of termination under their own attendance policy. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 5, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs