

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD M MAY
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 17A-UI-01548-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/22/17
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 7, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 17, 2017. Claimant participated personally. Employer participated by Brian Koopman.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 21, 2017. Employer discharged claimant on January 21, 2017, because claimant had earned employer a red flag for claimant's – and other co-workers – lack of filling out the daily report on December 9, 2016. A monthly audit completed on January 9, 2017 showed this error. Employer stated that it then did further research into claimant's activities in filling out the daily PLE (Powered Lifting Equipment) checklist. Employer examined video of some unspecified dates and determined that claimant had not been conducting an actual physical investigation of the vehicle as he was instructed to. Claimant received this instruction through ongoing training, and the documents to be filled out do ask about the operation of the vehicle.

Employer did not give claimant any warnings prior to his termination. Employer stated that claimant was terminated for lying about conducting the examinations over an extended period, and not for his mistake in not filling out a log. Claimant's alleged lies were when claimant filled out the daily PLE report and signed off on stating he did the entire examination of the vehicle when in fact he only did a visual examination from a distance away from the vehicle.

Claimant stated that he had signed off on the checklist through his observation of the vehicle, which he did on a nightly basis. Claimant was not seen doing a physical examination of the vehicle, and admitted that his procedures did not include a physical examination. Claimant argued that the goal of the PLE checklist was to determine whether the vehicle was in proper running order and not leaking. Claimant stated that he knew the equipment was running

properly as the users had not told him anything differently, and that he could tell that there were no leaks as there was no fluid on the floor under the vehicle. Claimant did not check personally to determine that the equipment was running properly and stated that there were very few places where he could physically inspect the vehicle as it was a closed system. Claimant's signing of the checklist did indicated he'd done a specific exam.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979);

Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning honestly filling out forms. Claimant was a manager for employer. He was one of the people responsible for checking the safety of a piece of equipment. Claimant did not do his duties, nor did he ask if his abbreviated sight check was in accordance with company rules. He did not check with his superiors or with the auditors to determine whether it was okay to fill out the forms as he did, without actually doing the physical inspections.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew the specifics to be followed on his daily check of the vehicle. For an extended period of time claimant, as a leader over employees, took a shortcut while he signed off that he had done his duties. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 7, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs