

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BOBBI M SHELTON**  
Claimant

**WALMART INC.**  
Employer

**APPEAL 21A-UI-21014-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/25/21**  
**Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On September 22, 2021, the claimant/appellant filed an appeal from the August 27, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant being discharged for conduct not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2021. Claimant participated at the hearing through attorney Cara Rotschafer. Employer participated through Director of Unemployment Services, Joe Bussell. The employer called as a witness Vaneissia Jones. Exhibits A, B, C, 1, 2, 3, 4, and 5 were admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUES:**

Is claimant's appeal timely?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant received notice that she had a fact-finding interview on September 13, 2021. (Exhibit A). AN unemployment insurance decision was mailed to the appellant's address of record on August 27, 2021. The appellant received the decision that she was denied benefits. Claimant called an IWD representative to discuss that she had not gone through the fact-finding process and the letter was premature. The representative directed her to another IWD representative that directed her to ignore the letter because it was regarding another case and that she should go through the fact-finding interview and they would send a new decision to her after the interview. Claimant went through the fact-finding interview and never received a decision. Claimant did not receive a decision. On September 21, 2021, claimant called IWD to find the status of her claim. Claimant was informed they were not going to issue a new decision because the decision would be the

same as the previous decision that she received in August. Claimant was directed to file an appeal. Claimant filed an appeal on September 22, 2021.

Claimant began working for employer on July 22, 2017. Claimant last worked as a part-time merchandising associate. Claimant was separated from employment on July 24, 2021, when she was discharged.

On July 24, 2021, at approximately 8:00 p.m. claimant was working when she noticed that a co-worker that was monitoring the entry doors was having an issue with a customer. The incident occurred at a Sam's Club that has a separate entrance door and a separate exit door. These doors are not close in proximity. The employer's hours of operation on July 24, 2021, were from 8:00 a.m-8:00 p.m.

When claimant arrived to assist her co-worker her co-worker had placed his hand on the customer's cart and stopped the customer from exiting the building. (Exhibit 4). Claimant walked up to the customer and explained that she needed to exit through the exit doors. The employer requires customers that have purchased items to leave through the exit door so they can have their receipts scanned by a machine and then an associate scans three of the items in the customer's cart to verify that they have paid for the items. The entrance door workers do not have scanners to comply with this procedure. In the video claimant is seen pointing and directing the customer to the exit door. (Exhibit 4). The customer became upset and the claimant called for a manager three different times. No managers came to assist with the matter.

The incident occurred at the time the facility was closing for the day. While this dispute was going on claimant's co-worker stepped away and turned the automatic doors off to the outer door so people could not enter or exit the building from that doorway. (Exhibit 5). The facility has two entry doors a person has to enter before they enter the building. The incident occurred at the set of the doors that are the innermost doors closest to the inside of the store. (Exhibit 5). When claimant's co-worker stepped away, claimant took his spot in front of the customer and was blocking the customer's ability to exit the building through the entrance door. Eventually claimant left the customer so she could make an announcement that the store was closed. The customer complained to claimant's manager, Eric, about the incident.

Unbeknownst to the claimant the exit door staff member had told the customer to exit through the entry doors. The customer had reported that she had recently had a medical procedure and it was hard for her to walk the distance that was required for her to exit out of the exit doors. Claimant was not aware that the customer had recently had a medical procedure.

Claimant was called to the office by her manager Eric. The customer informed Eric that claimant had pointed her finger in her face and yelled at her. Eric reviewed the video prior to the meeting. Eric informed claimant that her behavior was completely unacceptable and terminated her immediately. Claimant was terminated for violating the "Investigation and Detention of Shoplifters Policy." (Exhibit 1 and 2).

The employer's Investigation and Detention of Shoplifter's Policy prohibits associates from restraining a suspect or any other customer. (Exhibit 2, Making Safety Your Priority, bullet point 4). The policy only authorizes specific employees to detain customers. Exhibit 2, pg. 1). Claimant is not an authorized associate to detain customers. The policy lays out requirements if the decision to detain is made by an authorized associate. (Exhibit 2, pg. 3). The policy also states that "failure to comply with any aspect of this policy may result in disciplinary action, up to and including termination." (Exhibit 2, pg. 3). Claimant received a copy of this policy on July 28, 2017. (Exhibit 3).

The employer did not have a written policy on when customers could exit through the entry door. Claimant was instructed to only allow customers to exit through the entry doors in certain situation like if the person was visibly handicapped, if the customer did not purchase items, if the customer was only going in to eat at the cafeteria, or if they were visiting the pharmacy. The employer had a verbal policy that if there was a dispute with a customer about leaving the facility through the entrance then they should let the customer continue to exit through the entry. The claimant was unaware of this policy and the employer did not have proof that claimant was aware of this policy.

Claimant had two prior written warnings. One warning occurred on November 16, 2020, when she was written up for taking merchandise out a customer's hand when the customer had taken a garment off of a cart that she was using. The claimant grabbed the merchandise from the customer so she could not purchase it because the garment was no longer being sold. Claimant was put on a one year probation and was warned that she could be terminated if she violated it again. Claimant has another written warning for violating the same policy, but the incident was not similar.

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

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. Claimant found out about the misinformation when she called into IWD inquiring about when she would receive a decision. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was discharged for job-related misconduct. The administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) and (8) provide:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case the employer is arguing that claimant should be denied benefits because she violated their detention policy. (Exhibit 2). Claimant testified she did not suspect claimant of shoplifting but was following the company's verbal policy that does not allow customers to exit through the entrance doors. Alternately, the employer argues that claimant was violating their verbal policy that allows customers to exit through the entrance doors if there is a dispute. Claimant testified she was not aware of this verbal policy.

The administrative law judge sides with the claimant. Claimant did not detain the customer. Claimant was not attempting to detain the customer for shoplifting. The customer could have exited the building through the exit doors if she would have turned around. If the customer was not able to turn around it was not due to the claimant's actions but due to her co-worker's actions. The claimant's actions did not violate the policy in Exhibit 2. Additionally, the claimant may have violated the employer's verbal policy that customers should be allowed to exit through the entrance doors. However, the employer had no evidence establishing that claimant was aware

of the verbal policy. Additionally, there was no verbal or written warnings notifying claimant that she would be terminated if she did not allow customers to exit through the entrance doors.

It is reasonable for the claimant to want to limit customers from exiting through the entrance doors due to the employer's procedure of requiring customers to have their receipts scanned before exiting the building to ensure that unpaid merchandise does not leave the building. The entrance door workers do not have scanners to follow the employer's procedure. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The claimant's appeal is timely.

The August 27, 2021, (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

January 6, 2022  
Decision Dated and Mailed

cs/mh