

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN P YOUNG
Claimant

APPEAL NO. 17A-UI-12419-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/22/17
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

Jonathan Young filed a timely appeal from the November 30, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Young was discharged on October 22, 2017 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on December 21, 2017. Mr. Young participated. Spencer Neal represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-12420-JTT. Exhibits 1 through 7 and 9 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO).

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jonathan Young was employed by Wal-Mart Stores, Inc., as a Cap Team Associate from November 19, 2016 until October 22, 2017, when Shift Manager Spencer Neal discharged him from the employment. Mr. Young's scheduled shift was from 2:00 p.m. to 11:00 p.m. Mr. Young worked four or five shifts per week. Though the employer characterized the employment as part-time, Mr. Young averaged 38 to 40 hours per week, indicating the employment was full-time. Mr. Young's Cap Team Associate duties included helping unload the daily freight truck, "breakpack" or initial separation and routing of freight, moving freight to the grocery department and other designated aisles, and "zoning" or stocking the grocery department and designated aisles. Toward the end of Mr. Young's employment the employer added processing returns to the list of duties. To process returns, Mr. Young would have to collect returned or stray merchandise from the customer service area, sort the merchandise, and return the merchandise to the appropriate retail aisle. If the returned merchandise was perishable food, Mr. Young would have to follow appropriate steps to discard the merchandise. Mr. Young's immediate supervisors were Cap Team Supervisors Jordan Weise and Allen Daehler.

The final incident that triggered the discharge occurred on October 20, 2017, when Mr. Young left 30 minutes prior to the scheduled end of his shift. The employer stresses that the discharge was not based on attendance. Instead, the employer points to Mr. Young's failure to complete return processing duties prior to his departure. Mr. Young collected the returned items from the customer service area. Mr. Young sorted the returned items. Mr. Young returned some but not all of the sorted items to the retail shelves. Before Mr. Young left the workplace, he told Mr. Weise how far he had gotten in processing the returns. Mr. Weise indicated that he would have another associate finish processing the returns. Mr. Young left the workplace under the belief that Mr. Weise had approved his early departure. At the request of a third-shift supervisor, Mr. Young had stayed past his 11:00 p.m. quit time on October 19, 2017. Under the employer's overtime protocol, once Mr. Young's work hours reached 40 hours for the week, he could elect to receive overtime pay for additional hours or leave early from subsequent shifts during the week to keep his hours from exceeding 40. Mr. Young was unaware when he left 30 minutes early on October 20 that Mr. Weise did not have authority to approve his early departure and that such approval had to come from a salaried manager. Mr. Weise subsequently spoke to Shift Manager Spencer Neal about Mr. Young not completing the return processing duties and this prompted Mr. Neal to meet with Mr. Young on October 22, at which time Mr. Neal discharged Mr. Young from the employment.

The employer asserts there was another instance in the week that preceded the discharge when Mr. Young failed to process returns, but the employer is unable to provide a date or other particulars concerning that incident.

In making the decision to discharge Mr. Young from the employment, the employer also considered that Mr. Young was slower than some other staff at performing the "breakpack" duties. Mr. Young felt that he had not been appropriately trained on the "breakpack" and that that was the basis for his relative inefficiency in performing those duties.

The employer points to another concern a couple weeks prior to the discharge, but asserts the incident did not factor in the discharge decision. A couple weeks before the discharge, Mr. Young lost a handheld device that he regularly used to find merchandise or process returns. The employer required that Mr. Young "check out" the device for use during his shift and return it prior to the end of his shift. The device was valued at several hundred dollars. On the day the device went missing, Mr. Young had been using the device to perform work in his assigned aisle when he was called away to assist in another area. Mr. Young inadvertently left the device behind in his assigned aisle and could not locate the device when he returned. Neither Mr. Young nor the employer knows what became of the device. Mr. Young was concerned that his loss of the device might trigger his discharge from the employment and raised that concern with the store director. Mr. Young offered to pay for the device, but the employer declined that offer.

In making the decision to discharge Mr. Young from the employment, the employer considered prior reprimands and the conduct that gave rise to the reprimands. On December 14, 2016, less than a month after Mr. Young began the employment, a supervisor issued a reprimand to Mr. Young for errors in processing chemical freight. On July 3, 2017, Mr. Neal issued a reprimand to Mr. Young for being on his cell phone, rather than moving on to another task, at a time when he was unable to move forward with an assigned task due to congestion of his work area but other work was available.

On September 14, 2017, a supervisor issued a reprimand to Mr. Young for failing to clean and organize his breakpack area in connection with completing his breakpack duties.

REASONING AND CONCLUSIONS OF LAW:

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 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 evidence in the record establishes that the employer had legitimate, occasional concerns about Mr. Young's work performance and judgment. The evidence does not establish willful and wanton disregard of the employer's interests or a pattern of carelessness and/or negligence indicating such intentional and substantial disregard of the employer's interests. The weight of the evidence establishes a final, triggering incident that arose from a mutual miscommunication between Mr. Young and Mr. Weise. Mr. Young reasonably believed he was following the employer's overtime protocol and that he had appropriate permission from Mr. Weise to leave 30 minutes early on October 20, 2017. The employer elected not to present testimony from Mr. Weise and presented insufficient evidence to rebut Mr. Young's testimony regarding the circumstances under which he left work early on October 20. While the employer asserts a second incident in the same week of the discharge of Mr. Young not completing the return processing duties, the employer is unable to provide the date or detail regarding that alleged neglect of duties. While Mr. Young made an error in judgment and was careless in not securing the handheld device a couple weeks prior to the discharge, the employer asserts that loss of the device did not factor in the discharge decision. These incidents and the earlier concerns do not rise to the level of substantial misconduct in connection with the employment that would disqualify Mr. Young for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Young was discharged on October 22, 2017 for no disqualifying reason. Accordingly, Mr. Young is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 30, 2017, reference 01, decision is reversed. The claimant was discharged on October 22, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs