

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALICE C MALLOY
Claimant

WALMART INC
Employer

APPEAL NO. 21A-UI-25639-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/10/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Alice Malloy, filed a timely appeal from the November 12, 2021, reference 03, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 13, 2021 without good cause attributable to the employer by failing to report for work three days in a row without notifying the employer. After due notice was issued, a hearing was held on January 19, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the appeal form, was received into evidence.

ISSUE:

Whether the claimant was laid off, discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Alice Malloy, was employed by Walmart, Inc. as a Sales Associate from May 2021 until October 6, 2021, when the employer discharged her from the employment. The claimant worked at the Walmart store in Keokuk. Shelbie Milligan, Team Lead, was the claimant's supervisor. The employer characterized the employment as part-time, though the claimant worked full-time hours, eight-hour shifts five days per week. On October 6, 2021, the claimant's supervisor summoned her to a meeting. The supervisor alleged the claimant had engaged in "time theft." The alleged incident dated from two weeks earlier, at a time when the claimant was on a scheduled break. The employer did not raise the alleged time theft concern with the claimant until the discharge date. On October 6, 2021, the supervisor required that the claimant return her employee badge and vest. The claimant involuntarily separated from the employment at that time.

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 Iowa Administrative Code rule 871-24.32(4).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The evidence in the record establishes an October 6, 2021 discharge for no disqualifying reason. The employer did not participate in the hearing and presented no evidence to prove a voluntary separation or a discharge for misconduct in connection with the employment. The evidence in the record establishes an October 6, 2021 discharge premised on an unsubstantiated allegation of "time-theft" two weeks earlier. The evidence establishes the claimant did not engage in the alleged time theft, that the employer unreasonably delayed discussing the matter with the claimant, and that the matter was no longer a "current act" at the time of the discharge. The claimant reasonably concluded on October 6, 2021 that she was being discharged from the employment, based on the supervisor telling the claimant the employer was letting the claimant go and the supervisor requiring the claimant to return her employee badge and vest. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 12, 2021, reference 03, decision is reversed. The claimant was discharged on October 6, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

February 9, 2022
Decision Dated and Mailed

jet/scn