

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN R SNODGRASS

Claimant

APPEAL NO. 09A-UI-11213-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 06/07/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 22, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice a telephone hearing was scheduled for and held on August 25, 2009. The claimant participated personally. The employer participated by Ms. Jean Reuter, Assistant Department Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Erin Snodgrass was employed by Wal-Mart Stores from July 29, 2008 until May 30, 2009. The claimant held the position of part-time bakery packager and was paid by the hour. Her acting supervisor was Jean Reuter.

The claimant was discharged on May 30, 2009 when Ms. Reuter believed that the claimant was not compliant with directives that had been given to her. On that day, Ms. Reuter was temporarily supervising the bakery department employees and had given the workers a number of duties to accomplish. Although the previous duties assigned had not yet been completed, Ms. Reuter began listing additional duties that another worker should accomplish. The manner in which Ms. Reuter was giving the directives was upsetting to the claimant, Ms. Snodgrass. The claimant, therefore, went to a different area in the bakery and began performing other duties. Ms. Snodgrass was attempting to avoid what was becoming a volatile situation and asked to be temporarily "left alone." When the acting supervisor followed the claimant to a different part of the work area, Ms. Snodgrass repeated her request to be "left alone" as the claimant wished to avoid a confrontation.

Ms. Reuter continued to believe that it was important to explain why she was giving the other worker directives and directed the claimant to “go, leave, don’t come back.” The claimant took the directive as a discharge and left the premises.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

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.

The testimony in this matter is disputed. The administrative law judge, having listened to the testimony and having considered the matter at length, concludes that the claimant was discharged on May 30, 2009 and did not choose to voluntarily leave her employment. Ms. Snodgrass testified with specificity as to the events and statements that day. In contrast, the testimony of the employer's witness was less concise. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable.

The evidence in this matter establishes that the claimant's conduct did not rise to the level of insubordination. The claimant had merely requested to be “left alone” because she was attempting to avoid a confrontation that day. Ms. Snodgrass continued to perform her duties in the bakery area and her request was not unreasonable under the attendant circumstances.

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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

DECISION:

The representative's decision dated July 22, 2009, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs