

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDRA A BUCKLEY
Claimant

APPEAL NO: 13A-UI-02800-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02/03/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Audra A. Buckley (claimant) appealed a representative's March 1, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2013. The claimant participated in the hearing. Matt Linn appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on May 26, 2003. She worked full time as a clerk in the receiving department at the employer's Anamosa, Iowa store. Her last day of work was February 5, 2013. The employer discharged her on that date. The reason asserted for the discharge was taking too long of breaks.

The employer had given the claimant a written warning on May 22, 2012 for taking too long of breaks, and on October 23 had given her a final written warning for the same issue. The claimant was entitled to take a paid 15-minute break in the morning and another in the afternoon. The employer asserted that after the October 23 warning the claimant had taken too long a break on January 11, 2013, February 4, and February 5. However, the only detail available for the January 11 and February 4 alleged incidents were that there was a break that day that was "more than 15 minutes." The only detail available for the alleged incident on February 5 was that supposedly at the morning break the claimant had been away 40 minutes.

After the first two warnings for long breaks the claimant had begun setting her alarm on her cell phone. She had subsequently ceased using her cell phone for that purpose as the employer had policies against the possession of cell phones in the store, and additionally because she believed she had gained a better sense of timing. When the two assistant managers confronted the claimant and discharged her on February 5 they did not provide her with any details about the alleged final incidents. The claimant assumed that the employer had concluded that she had exceeded the allowed 15-minute break because they must have been counting her time away from the receiving department, rather than counting the time starting from when she reached the break room. She denied that there had been any occasion in January or February where she had been away from the department for more than 20 minutes, indicating that the additional two or three minutes it took to get from her department to the break room and back would have been the additional time over 15 minutes the employer had been concerned about. Linn, the store manager, confirmed that the count for break time did not start until the employee reached the break room. Linn had no direct or personal knowledge as to what circumstances would have lead the two assistant store managers to conclude that the claimant had taken breaks of more than 15 minutes on any of the three occasions, nor as to what circumstances might have lead the assistant store managers to conclude that the claimant had taken a 40-minute break on February 5.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such 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. 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 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 of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that she had taken excessively long breaks after the final warning in October 2012. The claimant testified that other than the two or three minutes it took to get between the department and the break

room, she had not taken more than 15 minutes for her breaks in January and February. The employer relies exclusively on the at least second-hand account from the assistant managers; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those managers might have been mistaken, whether they actually observed evidence showing that the claimant's breaks took more than 15 minutes plus the two or three minutes going between the break room and the receiving department, or whether they are. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact took excessively long breaks in January or February. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 1, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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