

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARLENA K LEBLANC**

Claimant

**APPEAL NO. 08A-UI-03827-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 03/09/08 R: 04  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Wal-Mart Stores Inc. filed a timely appeal from the March 8, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 5, 2008. Claimant Marlena LeBlanc participated. Rosalinda Grimm, Store Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Marlena LeBlanc was employed by Wal-Mart Stores Inc. on a full-time basis from October 2004 until March 8, 2008, when Gary Phipps, Market Manager, and Steve Richmond, Market Human Resources Manager, discharged her from the employment. Store Manager Rosalinda Grimm carried out the discharge. Ms. LeBlanc had begun her employment as a Photo Lab Tech at the employer's Davenport store. In the fall of 2006, Ms. LeBlanc participated in the employer's management training program. In November 2006, Ms. LeBlanc went to work in the employer's Maquoketa store as an Assistant Manager. Ms. Grimm was Ms. LeBlanc's immediate supervisor at the Maquoketa store.

The sole incident that prompted the discharge occurred on March 6, 2008. Ms. LeBlanc and Support Manager Cindy Manning had traveled from Maquoketa to Mount Pleasant for a meeting. While Ms. LeBlanc was a salaried employee, Ms. Manning was an hourly employee. The employer has written policies that govern hourly employee breaks and how they are treated for payroll purposes. The employer requires that an hourly employee take a 30-minute, unpaid lunch break if the employee works a certain number of hours in a shift. The policy is intended to comply with Iowa law regarding employee breaks. Employees might also take shorter, paid breaks during the course of a shift. The employer's break policy calls for an employee to receive a reprimand if the employee fails to take a scheduled 30-minute lunch break. Prior to

March 6, 2008, Ms. Manning had received reprimands for failing to take scheduled lunch breaks.

On March 6, Ms. LeBlanc and Ms. Manning left Maquoketa for Mount Pleasant at 10:00 a.m. for a class scheduled to start at 1:00 p.m. It took approximately two and a half hours to travel from Maquoketa to Mount Pleasant. Ms. LeBlanc drove. On the way to Mount Pleasant, Ms. LeBlanc and Ms. Manning stopped in Iowa City for a 15 to 20-minute gas and restroom break. Ms. LeBlanc concluded there was insufficient time to stop for lunch prior to the 1:00 p.m. class. The class in Mount Pleasant lasted two hours. After the class, Ms. LeBlanc and Ms. Manning stopped at a fast food restaurant, where they spent 20 minutes inside ordering and eating food. Ms. LeBlanc and Ms. Manning then made the trip back to the Maquoketa Wal-Mart.

Because Ms. Manning had not worked a regular shift, she was not able to clock in and clock out in the usual method by swiping her ID card. Instead, Ms. Manning's time had to be manually entered into the employer's computer system. Ms. LeBlanc was not certain how to enter Ms. Manning's break information, given the unusual circumstances of the day and the fact that Ms. Manning did not receive the required 30-minute lunch break. Ms. LeBlanc had not previously traveled on the clock with an hourly employee. Ms. LeBlanc summoned Ms. Grimm for guidance. Ms. Grimm was disappointed that Ms. LeBlanc had not seen to it that Ms. Manning had a 30-minute lunch break as required by the employer's policy. Ms. Grimm instructed Ms. LeBlanc to enter Ms. Manning's time report information in accordance with what had actually transpired that day. Ms. Grimm and Ms. LeBlanc both knew that entry of the 20-minute lunch break would result in Ms. Manning receiving a lunch break "exception" and that Ms. Manning would face a reprimand.

Ms. Manning was present for the discussion between Ms. LeBlanc and Ms. Grimm. After Ms. Grimm departed, Ms. Manning spoke with the personnel manager, who confirmed that Ms. Manning would receive a reprimand if she had another lunch break "exception." After the discussion, Ms. Manning entered her time reporting information into the employer's computer system. Ms. Manning told Ms. LeBlanc that she was going to record that she took a 30-minute lunch break. Ms. LeBlanc said, "That's fine." Ms. Manning had recorded a 30-minute lunch break at 12:00 to 12:30 p.m., rather than the actual 20-minute lunch break at 3:00 to 3:20 p.m. Later that day, as part of her normal responsibilities, Ms. LeBlanc reviewed Ms. Manning's time report information and coded it into the employer's computer system as an approved time adjustment. Ms. LeBlanc had considered the 15-20 minute gas and restroom break, the travel time and the actual 20-minute lunch break, and concluded that Ms. Manning's time report was acceptable and/or fair.

On March 7, Ms. Grimm and the personnel manager reviewed the daily report that included information regarding employee breaks. Ms. Grimm noted that Ms. Manning did not show up as having a lunch break "exception" from March 6. Ms. LeBlanc was not scheduled to work on March 7.

On March 8, Gary Phipps, Market Manager, and Steve Richmond, Market Human Resources Manager, were at the Maquoketa store for an unrelated purpose. At that time, Ms. Grimm reviewed with the two gentlemen the events on March 6 concerning the reporting of Ms. Manning's time. Ms. Grimm and her two superiors concluded that Ms. LeBlanc had violated Wal-Mart policy by approving Ms. Manning's time report from March 6. Mr. Phipps and Mr. Richmond concluded that Ms. LeBlanc's actions amounted to falsification of an employer time report and determined that the appropriate disciplinary action to be taken against

Ms. LeBlanc was discharge from the employment. Mr. Phipps and Mr. Richmond then left the store and left Ms. Grimm to carry out the discharge.

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

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 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).

The evidence in the record establishes that Ms. LeBlanc disregarded Ms. Grimm's directive when she initially indicated approval of Ms. Manning's erroneous time report and later when she coded the erroneous time report as approved time adjustment. The evidence indicates that Ms. LeBlanc was in the uncomfortable position of knowing that Ms. Manning would face a reprimand for a situation that Ms. LeBlanc had caused if Ms. Manning accurately reported her lunch break information. The weight of the evidence indicates that Ms. LeBlanc did what she thought was fair, rather than what complied with Wal-Mart's break and time reporting policies. The weight of the evidence indicates that this incident was an isolated aberration in the context of a three-and-half-year employment. The administrative law judge concludes that Ms. LeBlanc

is not without blame for approving Ms. Manning erroneous time report. However, the administrative law judge concludes, based on the circumstances and the isolated nature of the incident, that Ms. LeBlanc's conduct is best characterized as a good faith error in judgment, rather than a wanton or willful disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. LeBlanc was discharged for no disqualifying reason. Accordingly, Ms. LeBlanc is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. LeBlanc.

**DECISION:**

The Agency representative's March 8, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs