

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITNEI C EASTER

Claimant

APPEAL NO. 13A-UI-09307-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 07/14/13

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 31, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2013. Claimant participated and was represented by Michael Meloy, Attorney at Law. Employer participated through asset protection manager Matt Gehant.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an associate and was separated from employment on July 16, 2013. She was fired due to allegations of having profited from the company by purchasing items with a discount card and coupons and selling them on the secondary market. Employee Christine Bronson noticed a Facebook group page with a post from claimant's page. An anonymous customer complaint letter said they purchased items out of her vehicle in the parking lot. That person did not return Gehant's phone call during the investigation that began June 19. The decision to discharge was made July 15. Gehant investigated by cross referencing the discount page with purchases and two complaint sources. He reviewed surveillance video for purchases she made and looked at journal receipts to match health and beauty items she had for sale. Asset protection associate Ernest Stokes interviewed claimant on July 2, and suspended her pending further investigation and decision. She told him items were not sold for profit and were donated to various non-profit shelters. The employer's policy prohibits use of a discount card for anything other than personal use, gifts or donation. The employer did not give her copies of receipts or ask her about specific items and ask her to respond. She purchased items from Target, Hy-Vee and Wal-Mart but sold nothing from Wal-Mart.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was based upon unsubstantiated allegations, in part, by an anonymous complainant. The employer did not give claimant enough information about the

allegations for her to respond with any degree of accuracy and provided no such documentation at hearing either. Inasmuch as the claimant denied the sale of items purchased from the employer and was selling items readily available elsewhere, the employer has not met the burden of proof to establish that claimant any misconduct. Benefits are allowed.

DECISION:

The July 31, 2013, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs