

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA M HANSEN
Claimant

APPEAL NO. 11A-UI-04772-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03-13-11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 8, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 6, 2011. The claimant did participate. The employer did participate through (representative) Lauren Richards, Assistant Manager and Katina Riemenschneider, Department Manager.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an apparel associate part time beginning November 6, 2008 through March 14, 2011 when she was discharged. The claimant was discharged for continued failure to accurately and completely perform all of her job duties. On March 1 the claimant was given a cart of merchandise to place on the sales floor. Her supervisor estimated that it would take her approximately one hour to complete the task. It took the claimant about two and one-half hours to complete the task. On March 3 the claimant was instructed to hang up men's t-shirts on a clearance rack to put out on the sales floor for purchase. Ms. Riemenschneider was working during the time period the claimant worked and at no time did the claimant tell her she could not complete the task because the store was out of hangers. When the claimant was leaving at the end of her work shift, she told her supervisor Ms. Riemenschneider that she could put the t-shirts out for sale as she was not doing anything else. The claimant simply did not want to perform her assigned tasks.

On March 8 during her work shift the claimant was assigned to process two shopping carts of returned merchandise to put them back on the sales shelves and racks so that other customers could purchase them. She had four and one-half hours to complete the work but finished at most one-third of the returns. Several times during her shift her supervisor could not locate her. The claimant did not perform the job to the best of her ability. Additionally, the claimant had been counseled on her attitude and how she answered the telephone while at work. The claimant simply did not want to follow the script all employees were expected to use when

answering the work telephone. The claimant has reached the termination level as the next step in her disciplinary progress and was discharged after her repeated failure to complete or in some cases even try to complete her job duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to completely and accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The April 8, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css