

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACH A JANISH
Claimant

APPEAL NO. 11A-UI-02331-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/23/11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 23, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge. Even though the claimant requested the in-person hearing, he did not appear for the hearing. Jared Zeutenhorst, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in December 2008. Prior to his employment separation, the claimant worked as a full-time night stocker. When the claimant was hired, the employer gave him information about the employer's violence-free workplace policy. This policy informs employees they can be discharged if they threaten a co-worker at work with physical violence.

Sometime earlier, the claimant and/or his girlfriend called a co-worker, D.Y., for a ride to work. On January 18, 2011, D.Y. noticed he had the claimant's girlfriend's phone number as a contact on his cell phone. D.Y. decided to play a joke on her. During lunch, when the claimant was with his girlfriend, D.Y. sent the claimant's girlfriend a series of text messages. D.Y. started the text with "Momma." When the claimant asked who this was, D.Y. told her a stalker. After a series of texts, the claimant's girlfriend determined D.Y. was sending her these texts.

The claimant and D.Y. punched back in for lunch about the same time. The claimant told D.Y. that if he sent his girlfriend anymore texts, he would physically harm him. D.Y. reported the claimant's threat to Zeutenhorst.

The employer investigated the incident. The claimant admitted to the employer that he had been involved in a confrontation with D.Y. On January 18 the claimant acknowledged he had

threatened to physically harm him D.Y. The employer's regional human resource department concluded the claimant's verbal threat violated the employer's policy and was a terminable offense even though the claimant was a good employee and his job was not in jeopardy before January 18. The employer discharged the claimant on January 24, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer did not allow co-workers to physically threaten another employee at work. Even though D.Y.'s conduct is not condoned, the claimant's decision to confront and threaten D.Y. at work amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. Based on the evidence presented during the hearing, the claimant committed work-connected misconduct. As of January 23, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's February 23, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 23, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw