

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRAD A JOHNSON**  
Claimant

**APPEAL NO. 13A-UI-11754-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 08/25/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 4, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 13, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Jolene Aberle participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for employer as a tire lube express service writer and greeter from October 24, 2012, to August 29, 2013. The claimant had never been trained or informed that he was not allowed to write up service orders for his own vehicles.

In early August, after the claimant had contacted management about employees servicing their own vehicles and not paying for the service, the employer conducted an investigation. The employer discovered that on May 5, the claimant had brought in his vehicle for service. He had a tire rotation and fuel injection service. The claimant wrote up the order but another service writer rung up the sale. He was unaware that the service writer discounted the tire rotation and only charged him for the fuel injection service. The employer also found that on June 8, the claimant's roommate had brought in his truck to have the tires rotated. The tires had been purchased from the employer with a lifetime free rotation and balance feature, so the claimant wrote up the order and did not charge the roommate for the tire rotation.

On August 29, two asset protection managers, Jolene Aberle and Brandon Pohlman, questioned the claimant about the transactions in May and June. They told him the conversation was voluntary and he could leave at any time. He explained the transactions.

When the managers left the room to check on the lifetime rotation and balance, they left the claimant in the room to wait. He came out and asked Pohlman what was going on. Pohlman asked him to go back in the room. After waiting in the room for a short time more, the claimant came out and told Pohlman that he was leaving.

The employer discharged the claimant for not purchasing services performed on his vehicle.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Aberle testified that the claimant's separation was because he left work without permission and did not return. This is contradicted by Aberle's own statement that states that he was discharged for gross misconduct for not purchasing services performed on his vehicle. The separation was a discharge for the reasons stated in the statement completed at the time of the incident.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant did nothing wrong in regard to the tire rotation on his roommate's truck. I believe his testimony that he was unaware that he had not been charged for the tire rotation in May. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated October 4, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs