

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTINA JONES
Claimant

WALMART INC
Employer

APPEAL NO. 24A-UI-06779-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/30/24
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On July 25, 2024, the employer filed a timely appeal from the July 19, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 31, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on August 9, 2024. Kristina Jones (claimant) participated. Cynthia Lopez represented the employer. Exhibits 2 through 12, 14 and 15 were received into evidence. Exhibits 1 and 13 were not admitted into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO & KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Kristina Jones (claimant) was employed by Walmart, Inc. as a full-time hard lines associate at the Denison Walmart store until May 31, 2024, when Cynthia Lopez, General Merchandise Coach (manager), discharged her from the employment. Ms. Jones began her employment with Walmart in 2011 and was in the hard lines associate position during about the last three and a half years of the employment. Ms. Jones' duties in the hard lines associate position included answering customer calls, unlocking locked display cases, price changes, updating labels on retail shelves, preparing product "features," moving freight to the retail floor, training and assisting coworkers, and organizing overstock freight in the backroom. Ms. Jones' duties did not include supervising other employees. Team Lead Jasmine Matute was Ms. Jones' immediate supervisor.

The May 31, 2024 discharge followed a May 28, 2024 interaction between Ms. Jones and three coworkers on May 28, 2024. On that day, Ms. Jones decided to take the coworkers to task for putting freight in her assigned retail floor area that did not belong. Ms. Jones brought the freight to the backroom, tossed the freight down, and instructed the two newer employees who had moved the freight to her area to do a better job sorting freight and moving it to the correct area. Ms. Jones then sought out the Team Lead, Charlie, who was responsible for training the newer employees so that she could express her frustration about having to remove freight from her area and about Charlie not properly training the newer employees. When Ms. Jones located Charlie, a heated exchange ensued during which Ms. Jones and Team Lead Charlie each raised their voices on the sales floor and then in the backroom. The heated exchange on the sales floor occurred in an area where customers might have overheard it. The heated exchange that followed in the back room occurred in the presence of the two newer employees. During the exchange Team Lead Charlie protested that he was too busy to deal with Ms. Jones' complaint. He accused Ms. Jones of being lazy and told her she should just move the freight from her retail floor area to the backroom. He used profanity. Ms. Jones did not use profanity, but used animated gestures as she vented her frustration in the backroom. The two newer employees later indicated to Ms. Lopez that the exchange made them feel uncomfortable. Ms. Lopez interviewed the employees involved in the incident, including Ms. Jones. The employer deemed Ms. Jones' conduct a violation of the employer's harassment policy, which included a requirement of mutual respect and a prohibition against creating a hostile or offensive work environment. Ms. Jones was aware of the employer's policies, including the harassment policy.

In making the decision to discharge Ms. Jones from the employment, the employer considered earlier incidents involving Ms. Jones' demeanor when she interacted with others and the reprimands associated with those incidents. In April 2022, an electronics customer complained when Ms. Jones asked the customer how many transactions he had because she had other customers waiting to be served. The customer desired to pay for merchandise in the electronics area and to divide the purchase into separate transactions. Other customers were also waiting to pay. In May 2022, the employer reprimanded Ms. Jones after an alleged emotional outburst while interacting with coach (manager). In November 2022, a customer complained when Ms. Jones told the sporting goods customer she had to follow company policy when selling a deer tag and muzzle loader. More recently, the employer issued a reprimand to Ms. Jones in response to incidents on March 27 and 28, 2024. On March 27, 2024, Ms. Jones complained over the walkie-talkie about being summoned to assist a customer outside her usual work area. Ms. Jones complained within hearing of the customer she was summoned to serve. On March 28, 2024, Ms. Jones used a somewhat stern voice when telling a customer for a second time that the store was not a playground in response to the customer bouncing a ball in the store and ignoring her initial utterance.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- ...
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- ...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee’s use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

The evidence in the record establishes a discharge for no disqualifying reason. While Ms. Jones’ contribution to the May 28, 2024 interaction was unreasonable and involved poor judgment on her part, it did not rise to the level of a knowing violation of a uniformly enforced work rule or misconduct in connection with the employment. Ms. Jones expressed frustration but she did not harass her coworkers. The weight of the evidence indicates that the Team Lead, Charlie, engaged in worse behavior than Ms. Jones without consequence. The prior incidents the employer took into consideration also did not rise to the level of misconduct in connection with the employment, though the employer was understandably concerned about Ms. Jones’ judgment and demeanor when she delivered information to coworkers and customers and

counseled her on that. Ms. Jones is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 19, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on May 31, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

August 19, 2024
Decision Dated and Mailed

jcb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.