

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MONICA WARE**  
Claimant

**APPEAL NO: 11A-UI-16613-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 11/27/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's December 23, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Mark Woods, an assistant manager, Marilee Willis, an hourly supervisor, Sarah Barnett, Niki Smith and Charles Dukes appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 August 2007. She worked full time at a variety of jobs. Most recently she worked in customer service.

During her employment, the claimant received some coaching or warnings. In April 2011, the claimant received a warning for her job performance. In early September 2011, she received a warning for a safety issue. Prior to November 24, the claimant had not received any written warnings for the way she talked to or interacted with customers. The claimant does not remember a supervisor talking to her about the way she talked to or interacted with customers.

On November 24, Thanksgiving, the claimant was at work and answered the employer's phone. After a customer asked the claimant four times if the employer was open that day the claimant said, "I answered the phone didn't I." Although the customer laughed, he later complained about the way the claimant talked to him. Willis overheard the claimant make the comment, but did not say anything to the claimant. Willis later reported to Woods what she overheard the claimant say to the customer.

On Friday, November 25, the claimant was at the store, as a shopper, with her 13-year-old nephew. When they got up to the cash registers a customer, who the claimant knew, told other

customers where to go to get checked out. The claimant told this customer that she was not an employee and the employees, who were working, were doing a fine job of directing customers. This customer complained that the claimant swore at her when the claimant had not.

On November 30, 2011, the employer talked to the claimant about the November 24 and 25 complaints. The claimant acknowledged that she should not have made the November 24 comment to the customer who kept asking if the store was open. The claimant denied she swore on November 25. Since the claimant had already received two previous warnings, the employer discharged the claimant for the November 24 and 25 complaints.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer established business reasons for discharging the claimant. Even though the claimant admitted she should not have said, "I answered the phone, didn't I," the fact Willis did not say anything to the claimant when she overheard it supports the conclusion the claimant used poor judgment, but did not commit work-connected misconduct. The claimant received written warnings for other issues, but there is no evidence anyone talked to the claimant or gave her a written warning for what she said or how she interacted with customers. This November 24 isolated comment does not rise to the level of work-connected misconduct. The evidence does not establish that the claimant swore at any one at the store on November 25. She did not commit work-connected misconduct on November 25. As of November 27, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 23, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 27, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs