

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC PORTER
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 17R-UI-06495-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/11/16
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 27, 2016, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 5, 2017 in-person. Claimant participated personally and with attorney Jeffrey Jacobs. Employer contacted the administrative law judge and requested that employer's representative be allowed to appear over the phone for the in-person hearing. Said request was granted. Employer on September 13, 2017, requested a continuance in this matter such that in-house counsel could have more time to prepare for the hearing. That request was denied as this matter has been ongoing, with no new issues, since December, 2016. Employer failed to appear for the hearing or have a representative register to be contacted by phone and did not participate. Claimant's Exhibits A-E were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 7, 2016. Employer discharged claimant on December 7, 2016 because claimant allegedly was dishonest when confronted about a relationship claimant had with a co-worker.

Claimant worked as an assistant manager for employer. Claimant had a relationship with another assistant manager at the same store who worked a different shift. Neither party had a supervisory role over the other party. Sometime prior to December 1, 2016 (Claimant was unsure of specific dates) claimant and the significant other also working for employer, met in a manager's office. There were no windows, and only one door to enter the office. When claimant's girlfriend walked into the room, she gave claimant a "hello" kiss. Video cameras in the room spotted the kiss, as well as a hug which occurred on another occasion.

On December 1, 2016 claimant was called into the office with the store manager. There, he was asked if he had a relationship going on with another employee. Claimant stated that this was a private matter, and not connected to work. The manager stated that he agreed.

On December 7, 2016, claimant was brought back into the office and terminated for not being honest with employer regarding a relationship he had with a co-worker.

Employer has a policy that states, "No associate or applicant may be considered for or placed in a position where the associate's supervision of that individual would create an actual or perceived conflict of interest or where such placement would adversely impact the protection of our assets." (Cl. Ex. B). Employer's document listed examples where one party was in a supervisory position over another with whom he had a relationship.

Claimant had not been warned of his relationship creating a conflict. Claimant and his partner researched documents prior to beginning their relationship to ensure that they were not in violation of company policies.

Claimant stated that at least ten other couples, or family members were working for employer at the time of claimant's termination, with many having supervisory duties over the other party. None were terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning relationships with other parties whom one employee has supervisory capacity over, and honesty when questioned regarding the relationship.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was not dishonest about his relationship, rather he told employer that it was a private matter, and employer agreed. The relationship itself does not appear to be in violation of employer's policies. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated December 27, 2016, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn