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

ANTONETTE SHIELDS
Claimant

APPEAL NO: 09A-UI-05340-ET

ADMINISTRATIVE LAW JUDGE
DECISION

WAL-MART STORES INC
Employer

OC: 12-07-08
Claimant: Respondent (1)

Section 96.5(2)(a) - Discharge for Misconduct
871 IAC 23.43(9) - Combined Wage Claim Relief of Charges

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2009, reference 01 decision that denied its request for relief of charges. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 27, 2009. The claimant participated in the hearing. Major Reed, Asset Protection Coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer's Iowa account can be relieved of charges for benefits which might be paid to the claimant by another state.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Wal-Mart from June 19, 2007 to December 6, 2008 when she was discharged. She was working on 'black Friday' and failed to ring up a Cabbage Patch Doll for $24.96. There were two cashiers at each register, one ringing up the sales and the other cashier placing the merchandise in bags. The customer had some candy canes that she wanted rung up separately from the doll. The claimant rang up the candy canes and then put the doll on the other side of the register. The other cashier thought it had been entered in the register so put it in the bag. There were two other employees checking all receipts when customers left and the mistake was caught. The customer did not leave with the unpaid merchandise but the claimant was discharged because her error involved money.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer cannot be relieved of charges.

871 IAC 23.43(9) provides in part:

> (9) Combined wage claim transfer of wages.
>
> a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim.…

The issue to be determined is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 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 individual shall be disqualified for benefits 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.

871 IAC 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.

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 claimant was discharged for failing to ring up an item of merchandise. She contends it was an error and it was an isolated incident. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The claimant had not received any previous disciplinary warnings and did not know her job was in jeopardy. She did make a mistake but one mistake or isolated incident of negligence does not rise to the level of disqualifying job misconduct as defined by Iowa law.

The evidence confirms the claimant's separation was not disqualifying and benefits would be paid on an Iowa claim. Therefore, the employer's account may not be relieved of charges under the provisions of the above Administrative Code section.

DECISION:

The March 18, 2009, reference 01, decision is affirmed. The employer's account may not be relieved of charges.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/pjs