

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM M HEBL
Claimant

APPEAL NO. 16A-UI-10127-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/08/15
Claimant: Appellant (2)

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Adam Hebl filed a timely appeal from the September 9, 2016, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Hebl was discharged on August 1, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on September 30, 2016. Non-attorney representative Tina Schmidt represented Mr. Hebl. Mr. Hebl and Ms. Schmidt both testified. Jacob Murphy, Assistant Manager, represented the employer. Exhibits One through Four and Six through 10 were received into evidence.

ISSUE:

Whether Mr. Hebl was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adam Hebl was employed by the Iowa City Wal-Mart during two distinct periods. Mr. Hebl began the most recent period of employment on December 31, 2015 and worked as a full-time “Cap 2 Onloader” (stock person) until August 1, 2016, when Brian Koopmann, Market Resource Manager, discharged him from the employment upon the recommendation of Jacob Murphy, Assistant Manager. Mr. Hebl's duties involved moving incoming pallets of freight from the truck to the cooler or other storage area. Mr. Hebl's immediate supervisors were Cap 2 Supervisors Thomas Nichols and Nicole Peterson.

Adam Hebl is a person with disabilities. Mr. Hebl has been diagnosed with attention deficit hyperactivity disorder and mild autism. Mr. Hebl is a high school graduate. When Mr. Hebl was in school, he participated in special education programming. The employer's management team was aware of Mr. Hebl's disabilities during the employment.

The final incident that triggered the discharge occurred on July 26, 2016. At about 6:47 p.m., Mr. Hebl entered a dairy cooler with a pallet of dairy products and happened upon a spilled pallet of dairy products. Mr. Hebl did not create the spill. Instead, the pallet had been poorly

wrapped and, as a result, about half of the pallet contents fell over onto the cooler floor, creating a substantial liquid mess on the floor. At the time Mr. Hebl happened upon the mess, he and other onloaders were engaged in moving additional freight from the truck. Mr. Hebl observed the mess. Mr. Hebl did not attempt to clean up the spill and did not report the spill to a supervisor or anyone else. Shortly thereafter, Mr. Hebl went on his lunch break. Another employee later observed the spill and this led to the spill being cleaned up. Mr. Hebl had participated in the employer's Spill Clean Up Procedures training as part of the employer's safety training. Mr. Hebl's failure to clean the spill or at least alert a supervisor of the spill violated the employer's procedure.

In making the decision to discharge Mr. Hebl, the employer considered prior dissimilar incidents and associated reprimands. At the end of May, Mr. Hebl violated the employer's cell phone policy by using his cell phone outside of break time. During the first week of June, Mr. Hebl did not immediately comply with Ms. Peterson's directive that he move a particular pallet. At the time, Mr. Hebl needed to use the restroom. Mr. Hebl went to the restroom, got a drink of water, and then returned to move the pallet. During the last week of June, Mr. Nickols directed Mr. Hebl to check with Ms. Peterson to learn the tasks Ms. Peterson wanted Mr. Hebl to work on. Mr. Hebl had observed a large amount of cardboard in the backroom, concluded that the cardboard presented a safety issue and should be baled. Instead of checking with Ms. Peterson, Mr. Hebl baled the cardboard. Baling the cardboard was a task assigned to the employer's maintenance staff, but no maintenance staff were there at the time to perform the baling work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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).

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 871 IAC 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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence establishes some legitimate concerns regarding Mr. Hebl's conduct, but does not establish misconduct that would disqualify Mr. Hebl for unemployment insurance benefits. Regarding the final incident, the weight of the evidence establishes that Mr. Hebl was negligent in failing to take reasonable steps to clean the spill in the dairy cooler or, at minimum, notify a supervisor of the problem. The evidence does not establish any other similar safety concerns. The evidence establishes that Mr. Hebl violated the employer's cell phone policy at the end of May, but that there was no other similar conduct thereafter. The evidence fails to establish insubordination in connection with Mr. Hebl's minimally delayed response to the directive that he move a pallet of freight during the first week of June. Mr. Hebl needed to use the restroom and it was not unreasonable for him to use the restroom or to get a drink of water prior to performing the physical labor. The evidence fails to establish insubordination in connection with Mr. Hebl's decision to bale the cardboard instead of immediately reporting to Ms. Peterson for directions at the end of June. In that instance, Mr. Hebl exercised the sort of

initiative that the employer faulted him for not exercising on July 26. Mr. Hebl recognized a safety concern and addressed it.

The evidence in the record fails to establish a pattern of carelessness or negligence that would demonstrate a willful and wanton disregard of the employer's interests. The evidence also fails to establish a pattern of unreasonable refusal to follow the employer's directives. The weight of the evidence establishes that Mr. Hebl's disability issues factored in each of the events that employer considered when discharging him from the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hebl was discharged for no disqualifying reason. Accordingly, Mr. Hebl is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 9, 2016, reference 03, decision is reversed. The claimant was discharged on August 1, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs