

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN S VAN METER
Claimant

APPEAL NO. 12A-UI-13392-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09/30/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct – Disciplinary Suspension

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 29, 2012 (reference 03) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on January 8, 2013. Claimant participated. Employer participated through asset protection manager, Tony Lai.

ISSUE:

Was the claimant suspended for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part time as a pharmacy technician and was suspended from employment on September 30, 2012 and remains on suspension. The employer has an arrested associate policy regarding drug or violent offenses. He was arrested in the store on September 27, 2012 for assault causing bodily injury during off-duty hours and, pursuant to that policy, was placed on unpaid leave suspension until there is a disposition in the criminal proceeding. Claimant entered a not guilty plea on October 1, 2012. The current criminal charge status is pending resolution and the trial is scheduled for the end of February 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for misconduct.

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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Although claimant entered a not-guilty plea, the employer is not responsible for determining guilt or innocence; that falls to the criminal justice system. The employer is entitled to apply its off-duty conduct policy and suspend claimant pending resolution of the arrest for an alleged act of violence. Benefits are denied.

DECISION:

The October 29, 2012 (reference 03) decision is affirmed. Claimant was suspended from employment for misconduct. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css