

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J WOODS

Claimant

APPEAL NO. 14A-UI-03708-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/09/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 28, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. An in-person hearing was held on May 19, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Grant Beckwith, Attorney at Law. Susan Chmelovsky participated in the hearing on behalf of the employer with a witness, Jonathon Schram. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a maintenance worker for the employer from August 15, 2012, to March 12, 2014. He had received a written warning on January 9, 2014, because when asked by a support manager to clean the rest rooms, he said he did not have enough time. In the warning, he was notified that the next step if the behavior continued was termination.

On March 12, 2014, the claimant was dumping bins of trash. He asked the assistant manager, Jonathon Schram, to open the trash compactor. When Schram asked the claimant to empty some bins left in the backroom by the dayshift, the claimant said "okay I will," but then said he had something he wanted to bring to Schram's attention. He complained to Schram about the dayshift employees repeatedly leaving work for the overnight maintenance crew and leaving work early. He and other overnight employees had complained to management about this before but the problems continued. He told Schram that he wanted someone to do something about this because it made more work for the overnight employees and asked Schram if there was anything Schram could do. When Schram said he could not do anything at that time, the claimant said he intended to go to the store manager because no one would help him out with the problem. At that point Schram became upset with claimant and told him to go to the office because he was tired of the claimant being rude and disrespectful.

When they got back to the office, the claimant requested to talk to a co-manager. Schram called the co-manager and a decision was made to discharge the claimant for alleged insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he initially said "okay I will" when asked to empty the trash in the backroom but then attempted to get Schram to take some action to correct what the claimant believed was workload disparity issue. I cannot consider this attempt and statement that he was going to the store manager to be insubordination.

I believe Schram became upset by what he considered resistance by the claimant when he did not immediately get the trash from the back. The preponderance of the evidence establishes the claimant was demanding in trying to get his issue addressed but not rude and disrespectful. In addition, the courts have emphasized that "employees are not expected to be absolutely docile and well-mannered at all times." *Carpenter v. Iowa Dept. of Job Service*, 401 N.W.2d 242, 246 (Iowa Ct. App. 1986). No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 28, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css