

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA L DOWNING
Claimant

APPEAL NO. 09A-UI-01369-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/21/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pamela Downing filed an appeal from a representative's decision dated January 23, 2009, reference 01, which denied benefits based upon her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was scheduled for and held in Council Bluffs, Iowa, on March 3, 2009. Ms. Downing participated personally. Participating on behalf of the claimant was her attorney, Mr. Aaron Rodenburg. Although duly notified, there were no appearances on behalf of the employer. Exhibits One, Two, and Three were received into evidence.

ISSUE:

At issue in this matter is whether the claimant was discharged for intentional misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for Wal-Mart Stores from December 4, 1995, until September 6, 2008, when she began an approved medical leave of absence. Ms. Downing was employed as a full-time sales associate and was paid by the hour.

Ms. Downing began a medical leave of absence in order to undergo knee replacement surgery for what the claimant considered to be a work-related illness or injury. After undergoing the surgery and making sufficient recovery, Ms. Downing attempted to return to work with Wal-Mart Stores on December 22, 2008, with the limitation that she perform no prolonged standing. On December 31, 2008, the claimant was informed by Wal-Mart Stores that her position with the company had been terminated, as the employer was no longer willing to keep the claimant on a leave of absence pending her full recovery and ability to return to work with no limitations.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Downing was discharged for misconduct in connection with the employment. It does not.

The evidence in the record establishes that Ms. Downing did not choose to voluntarily quit her employment with Wal-Mart Stores but that the claimant was discharged from employment on December 31, 2008, when she was unable to return to work without limitations and had exceeded the amount of time that Wal-Mart Stores was willing to allow her to be away from work. The evidence in the record establishes that Ms. Downing had not been fully released to return to work at the time. Although the claimant was willing to return to work with a minor limitation, the employer would not allow the claimant to return and discharged Ms. Downing from employment. The claimant began an approved medical leave of absence on September 6, 2008, and continued on the approved medical leave of absence until her discharge from employment on December 31, 2008.

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 insurance benefits. The evidence in this case establishes that the claimant engaged in no disqualifying conduct. The claimant was under the care of a medical practitioner and had not been fully released to return to work at the time a management decision was made to terminate Ms. Downing from her employment with Wal-Mart Stores, Inc. While the decision to terminate Ms. Downing may have been a sound decision from a management viewpoint, intentional disqualifying misconduct on the part of the claimant has not been shown. The claimant was discharged at and for the convenience of the employer under non-disqualifying conditions.

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.

For the reasons stated herein, the administrative law judge concludes the employer has not sustained its burden of proof in establishing the claimant's discharge was under disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated January 23, 2009, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw