

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANIS M HALE
Claimant

WALMART INC
Employer

APPEAL 18A-UI-10777-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/30/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 29, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2018. Claimant participated. Employer participated through assistant manager Charles Dukes and store manager Stewart Anderson. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 31, 2012. Claimant last worked as a full-time bakery/deli department manager. Claimant was separated from employment on October 3, 2018, when she was terminated.

Employer has a policy prohibiting company theft. The policy states consuming product without paying for it constitutes theft. Claimant was aware of the policy.

During the last year of her employment, claimant regularly consumed bakery product that could not be sold. Claimant removed the product from inventory before consuming it. Claimant did not pay for the product. Claimant allowed the subordinate employees in her department to consume the product as well.

On August 21 and 24, 2018, another supervisor, Jeff Stewart, overheard claimant speaking with subordinate employees about "extra" cookies. Stewart then observed claimant consuming the cookies. Claimant offered Stewart a cookie. Stewart declined. Stewart asked employees in the bakery department about the incident. The employees reported that claimant regularly asks them to bake extra cookies and doughnuts so she can eat them.

On August 24, 2018, Stewart reported claimant's actions to upper management and loss prevention. Employer began investigating the allegations.

On September 19, 2018, employer took written statements from employees in the bakery department. The employees reported claimant constantly snacked on sweets and frosting in the bakery department without paying for the items.

On October 3, 2018, employer interviewed claimant. Claimant admitted to snacking on cookies, doughnuts, and frosting without paying for the items. Employer terminated claimant the same day.

Employer never previously disciplined claimant for similar conduct.

Employer has never observed other managers consuming product without paying for it. Claimant did not report other employees or managers engaged in the same behavior prior to her termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant consumed bakery product without paying for it on a regular basis. Even if the product could not be sold to customers, claimant's conduct is in violation of employer's policy and amounts to theft from the company. As a manager, claimant was responsible to set an example for her subordinate employees and exhibit good judgment. She failed to do so here. Claimant contends other managers engaged in the same conduct and were not terminated. There is no evidence upper management at Walmart was aware of or has observed other managers engaging in the same conduct.

Employer established claimant was terminated for job-related misconduct.

DECISION:

The October 29, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

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