

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IVORY M CLAYTON
Claimant

APPEAL NO: 10A-UI-07851-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/11/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's May 19, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on July 12, 2010. The claimant participated in the hearing. Casey Obereuter, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 9, 2007. She worked as a full-time assistant manager. The employer's attendance policy considers three incomplete shifts within three months as one unexcused absence. If an employee has three absences in a six-month timeframe, the employer starts its disciplinary procedure.

On January 24, 2010, the claimant received a Decision Day for job performance issues. After a Decision Day, an employee can be discharged if there are any further issues. On March 5, the claimant received a verbal warning for having three unexcused absences in a six-month period. The March 5 verbal warning occurred because the claimant called in sick on November 22 and called in on December 16 and March 5 to report she would be absent because her child was ill. When her child was ill, she was unable to take her daycare. On March 5, the employer informed the claimant the next time she had an absence, she would receive a coaching.

On December 11, 2009, and February 27, 2010 the claimant did not work her complete shift. On these days, she did not record her shifts correctly and reported to work late. On April 11, the claimant again incorrectly noted the time she was scheduled to work. As a result, she was late for work. After she reported to work late on April 11, she had three incidents where she failed to work her complete scheduled shift. The employer considered the three times she did not work

her complete shift as one absence. April 11 was the first time the claimant learned her job could be in jeopardy because of attendance issues that occurred after she received the January 24, 2010 Decision Day. Since the claimant had already received a Decision Day, the employer discharged her for another policy violation on April 12, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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 Department of Job Service*, 321 N.W.2d 6 (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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer may have had justifiable business reasons for discharging the claimant. The claimant, however, did not realize another attendance occurrence would end her employment. On March 5, the employer informed her that her next attendance occurrence would result in a coaching, not her discharge. The facts do not establish that the claimant was excessively absent. The evidence does not show that the claimant committed work-connected misconduct. As of April 11, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's May 19, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 11, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css