

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LULA M HOLMES
Claimant

APPEAL NO. 12A-UI-05268-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/11/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 7, 2012, reference 05, which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Burlington, Iowa on July 23, 2012. Claimant participated. The employer indicated they would not be participating.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Lula Holmes was employed by Wal-Mart Stores Inc. from September 27, 2011 until April 19, 2012 when she was discharged from employment. Ms. Holmes was employed as a part-time maintenance worker and was paid by the hour.

The claimant was discharged when she exceeded the permissible number of attendance infractions allowed under company policy. Ms. Holmes was aware of the policy and had been warned by the company. The claimant's absences were related medical and psychological issues. Ms. Holmes dutifully reported all impending absences to the employer prior to ending of her work shift. It is the claimant's belief that the lack of the use of disinfectants in her work caused her to be ill at times.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The evidence in the record establishes the claimant was discharged when she exceeded the permissible number of attendance infractions allowed under company policy. The evidence in the record establishes that the claimant's absences were due to illness and were properly reported to the employer.

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absenteeism must be both excessive and unexcused and that the concept included tardiness, leaving early, etcetera. The court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

As the evidence in the record establishes that the claimant's absences were due to illness and were properly reported, the administrative law judge concludes that the claimant was

discharged for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated May 7, 2012, reference 05, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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