

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRAD W STRYCZEK**

Claimant

**APPEAL NO. 10A-UI-07783-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**Original Claim: 04/25/10**

**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's May 18, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A telephone hearing was held on July 12, 2010. The claimant participated in the hearing. Marlon Griffin, the assistant grocery manager, testified on the employer's behalf. Caleb Hildenbran, John Whitver and Laura Schmitt were also present, but did not testify. 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 December 4, 2006. The claimant worked full-time. Hildenbran supervised him.

The claimant received a verbal warning for attendance issues December 7, 2009. He received this warning because he had more than four absences in six months. On January 6, 2010, the claimant received a written warning for failing to properly rotate food. On March 22, the claimant was scheduled to work at 8 a.m., but he thought he was scheduled to work at noon. When the claimant reported to work around noon, he had missed more than 50 percent of his scheduled shift. Based on the employer's policy, March 22 must be considered as an absence. On April 6, the employer gave the claimant his final written warning. The warning informed the claimant that he could not be late or absent until after June 2, 2010. The claimant had already been more than ten minutes late for work on February 23 and March 8, 2010. If he were late one time, he would have three incidents of reporting to work late, which would amount to one attendance issue or absence.

On April 20, the claimant was two hours late for work. The claimant's electricity went out while he was sleeping. His alarm clock did not wake him up and he overslept. As of April 20, the claimant had another attendance point added. On April 27, 2010, the employer discharged the claimant for violating the employer's attendance policy.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established justifiable business reasons for discharging the claimant. The claimant was late for work February 23, March 8, March 22, and April 20. On April 6 when the claimant received a written warning, he knew or should have known his job was in jeopardy after the employer indicated he could not be late or be absent until after June 2. On April 20, the claimant did not intentionally report to work late. Instead, his electricity went out during the night and he inadvertently overslept. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of April 25, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 18, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. But, the claimant did not commit work-connected misconduct. As of April 25, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw