

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-07544-ET
OC: 05-30-04 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 1, 2004. The claimant did not respond to the hearing notice and did not participate in the hearing. Devon Trombino, Training Coordinator and Scott Peterson, Assistant Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time stocker for Wal-Mart from September 4, 2003 to April 23,

2004. She was discharged from employment due to a final incident of absenteeism on April 18, 2004. The claimant was absent 17 times between October 24, 2003, and April 18, 2004. At the time of hire, the claimant explained she had two “medically needy” children and might need time off work if either child was hospitalized. The claimant’s daughter was hospitalized eight times between January 2004 and April 18, 2004, and when the claimant called the employer to report she would be absent April 18, 2004, her supervisor told her she needed someone who would be at work instead of always at the hospital and terminated her employment. The claimant had not received any warnings about her attendance during her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did have several absences, she told the employer at the time of hire that her children were “medically needy” and she might need time off work if her children were hospitalized and the employer did not issue any warnings to the claimant about her attendance. Although the employer contends the claimant voluntarily quit by failing to call or show up for work from April 18 to April 23, 2004, the claimant indicated her supervisor terminated her employment when she called to report she would be absent April 18, 2004, and it seems unlikely the claimant would simply stop calling in or showing up for work when she had properly reported all her previous absences and had not even been warned about her attendance in the past. Consequently, the administrative law judge concludes that because the final absence for which the claimant was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Benefits are allowed.

DECISION:

The July 2, 2004, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf