

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL MCANDREWS
Claimant

APPEAL NO. 08A-UI-01590-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01-13-08 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 5, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 3, 2008. The claimant participated in the hearing. Elaina Rocha, Assistant Manager, and Ollie Kane, Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 cart pusher, working 7:00 a.m. to 4:00 p.m., for Wal-Mart from November 13, 1993 to January 9, 2008. He was discharged from employment due to a final incident of absenteeism that occurred on January 9, 2008. The claimant was tardy January 10, 15, and 17; February 2, 4, 9, 11, 12, and 14; April 8, and 21; May 6, 9, and 10; July 16, 22, and 28; August 1, 4, 8, 10, 22, 25, 26, 29, and 30; September 28; October 3, 10, 19, 21, 22, 24, 25, 27, 29, and 31; November 15, 18, 21, and 28; and December 14, 17, 21, and 24, 2007; and January 2, 5, 8, and 9, 2008. Three incidents of tardiness count as one full-day absence. The claimant received a verbal coaching May 17, 2007; a written coaching September 20, 2007; and a decision-making day December 2, 2007. The employer uses a six-month rolling period when calculating attendance points. The employer asked him if he wanted to work another shift when it issued his verbal and written warnings, but the claimant declined because he wanted to prove to himself he could arrive on time. The claimant is a diabetic and takes medication to help him sleep and felt exhausted by his job and home life because he only received one weekend, or two days off in a row, per month. He testified he was also tardy because of health problems, taking care of his mother, and traffic. The employer terminated his employment after he accumulated nine attendance points, rather than the usual seven, because it was their busy season and his schedule differed from that of his manager.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant was tardy 49 times between January 10, 2007, and January 9, 2008. While he did face some unfortunate and challenging personal issues, the employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The February 5, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw