

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA CAGLEY
Claimant

APPEAL NO: 17A-UI-01113-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/01/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 20, 2017. The claimant participated in the hearing. Clarissa Videgar, Merchandise 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 customer service supervisor for Wal-Mart from June 24, 2015 to December 22, 2016. She was discharged for excessive unexcused absences and tardiness.

The employer uses a no fault attendance policy and an employee receives a first written coaching after accumulating up to three day absences for the same reason within a six month rolling period; a second written coaching after accumulating five more absences within a six month rolling period; a third written coaching after accumulating one more absence within a six month rolling period; and are terminated upon reaching another absence within a six month rolling period. The employer does not accept doctor's notes from employees or excuse absences due to properly reported illness unless covered by FMLA or another program.

The claimant was absent due to properly reported illness July 27, 2015; missed 50 percent of her shift September 21, 2015; was absent due to properly reported illness September 25, 2015; accumulated her third incident of tardiness and received one occurrence September 29, 2015; was absent due to properly reported illness November 3, 2015; accumulated her third incident of tardiness and received one occurrence December 24, 2015, and received her first written coaching January 10, 2016.

The claimant missed 50 percent of her shift January 29, 2016, was absent due to properly reported illness February 27, 2016; accumulated her third incident of tardiness and received one occurrence May 2, 2016; had an unapproved absence May 4, 2016; was absent due to properly reported illness May 21 and 22, 2016; and received a second written coaching May 25, 2016.

The claimant missed 50 percent of her shift May 27, 2016; was absent due to properly reported illness August 7, 19 and 20, 2016; accumulated her third incident of tardiness and received one occurrence September 14, 2016; was absent due to properly reported illness September 17, 19 and October 4, 2016; accumulated her third incident of tardiness and received one occurrence October 7, 2016; was absent due to properly reported illness October 16, 2016; accumulated her third incident of tardiness and received one occurrence October 22, 2016, was absent due to properly reported illness November 15, 17, 19 and 20, 2016; and received a third written coaching November 25, 2016. Although the employer's attendance policy states employees may only have one additional absence following the second written coaching or she will receive a third written coaching, the employer had another manager taking over at the time and he did not strictly follow the attendance policy. The employer did meet with the claimant and notify her she needed to improve her attendance but stated it would not count all the absences she received between the second and third written coaching notices because it did not warn her properly according to the attendance policy.

The claimant accumulated her third incident of tardiness and received one occurrence December 14, 2016; and was absent due to properly reported illness December 15, 16 and 17, 2016. The employer terminated her employment December 22, 2016, for excessive unexcused absenteeism and tardiness.

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 § 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.

Iowa Admin. Code r. 871-24.32(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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record.

(Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

While the claimant did have an inordinate number of absences and incidents of tardiness, 19 of her absences, including the final three, were due to properly reported illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The January 20, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs