

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

CARRIE A FETTERS
4365 NE 27TH CT
DES MOINES IA 50317

WAL-MART STORES INC
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11639-CT
OC: 09/26/04 R: 02
Claimant: Respondent (2)

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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated October 18, 2004, reference 01, which held that no disqualification would be imposed regarding Carrie Feters' separation from employment. After due notice was issued, a hearing was held by telephone on November 22, 2004. Ms. Feters participated personally. The employer participated by Penny Weaver, Assistant Manager. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Fetters was employed by Wal-Mart beginning September 30, 2002 as a full-time cashier. She was discharged because of her attendance. Her last day at work was March 8, 2004. She was scheduled off on March 9 and 10. Ms. Fetters called on March 11, 12, 14, and 15 to report that she would be absent due to illness. On or about March 15, she notified her manager that she would be absent a few days. She did not specify how long she would be gone.

Ms. Fetters saw her doctor on March 16 and was diagnosed with mononucleosis. She was to remain off work for approximately three weeks. The employer did not receive any medical statement from Ms. Fetters verifying her need to be absent. Ms. Fetters did not contact the employer for a leave of absence even though she had been on one in October. She did not report for work or contact the employer on March 17 and 18. When she had not been heard from, the employer took steps to remove Ms. Fetters from payroll on March 22. At the end of March or early April, Ms. Fetters contacted the employer about returning to work. She was advised at that point that she no longer had employment as the employer assumed she had quit. Ms. Fetters did not offer to provide a doctor's statement verifying her need to be absent after March 15.

Ms. Fetters had been late reporting for work on 21 occasions from September 21, 2003 through March 7, 2004. She had been absent without notice on September 25 and November 10, 2003, and February 5, 2004. Ms. Fetters was counseled about her attendance on December 4, 2003. The issue of her unsatisfactory attendance was also noted on her evaluations on November 24, 2002 and July 20, 2003.

Ms. Fetters has received a total of \$960.00 in job insurance benefits since filing her claim effective September 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Fetters was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

The final absences which caused Ms. Fetters' discharge began on March 17, 2004. Although the absence may have been due to illness, they were not properly reported to the employer. Ms. Fetters had at least three unreported absences on her record prior to March of 2004. This factor persuades the administrative law judge that the employer's testimony was true that there was no report of the absences after March 15. Ms. Fetters spoke to the employer a few days before she saw the doctor and indicated only that she would be absent a few days. As it turned out, she was going to be absent at least three weeks but did not contact the employer to explain this. When she attempted to return to work, the employer advised her that there had been no receipt of a doctor's statement regarding the absences. Ms. Fetters made no effort to document that she had given proper notice by submitting a doctor's statement in advance of her absences. This factor suggests to the administrative law judge that there had been no notice to the employer in advance of the absences. Therefore, it is concluded that the employer did not know in advance the extent to which Ms. Fetters would be absent after March 15.

Prior to her absences beginning March 17, Ms. Fetters had already accumulated 21 occasions of tardiness beginning September 21, 2003 and ending March 7, 2004, the day before her last day at work. She also had three occasions on which she was absent without calling in. Ms. Fetters had been warned that her attendance was jeopardizing her continued employment. In spite of the warning, she did not take steps to confirm her attendance to the employer's standards. The tardiness and unreported absences identified herein are sufficient to establish excessive unexcused absenteeism within the meaning of the law. Accordingly, benefits are denied.

Ms. Fetters has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 18, 2004, reference 01, is hereby reversed. Ms. Fetters was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Fetters has been overpaid \$960.00 in job insurance benefits.

cfc/