

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY B CLAYWORTH
Claimant

APPEAL NO: 11A-UI-11496-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/31/11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 24, 2011 determination (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. The claimant did not appear for the in-person hearing even though he requested the in-person hearing. Travis Spahr, an assistant store manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2010. The claimant worked as a part-time sales associate. The employer's progressive disciplinary policy informs employees that after they receive a Decision Day warning, the next step is termination.

The claimant received his Decision Day warning on April 9, 2011. On June 11, the claimant called in to report he was unable to work as scheduled. When the claimant returned to work, the employer talked to the claimant and told him if he had one more unexcused absence, he would be discharged. The claimant called on July 16 to report he was unable to work as scheduled. When the claimant reported to work again on July 30, the employer discharged him for violating the employee'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. 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).

In April 2011, the claimant knew or should have known his job was in jeopardy after he received a Decision Day warning. Even though the claimant notified the employer on June 11 and July 16 that he was unable to work, the facts do not establish why the claimant did not work. Since the employer discharged the claimant based on its attendance policy, the evidence establishes that the claimant committed work-connected misconduct. If the claimant had testified, the outcome of this case may have been different.

DECISION:

The representative's August 24, 2011 determination (reference 01) is affirmed. The employer discharged the claimant. The evidence indicates the claimant committed work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 31, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css