

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY W JANES
Claimant

APPEAL NO. 12A-UI-07247-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/20/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Zachary Janes, filed an appeal from a decision dated June 7, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 12, 2012. The claimant participated on his own behalf. The employer, Wal-Mart, did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Zachary Janes was employed by Wal-Mart from March 19, 2010 until May 21, 2012 as a full-time sales associate. He had been enrolled in school since the time he began employment and other management had accommodated his tardiness by allowing him to work later.

New management took a less casual view and he was given warnings for tardiness on March 23, April 19 and 30, 2012. He dropped out of school in late March 2012, but still was late because he depended on his girlfriend to drive him to work. He does not have a valid license due to unpaid traffic citation fines.

He was scheduled to begin work at 9:00 a.m. on May 16, 2012, and arrived at 10:45 a.m. He was discharged by his supervisor on May 21, 2012, for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

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(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

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 claimant had been advised his job was in jeopardy as a result of his chronic tardiness. He was aware the management had changed and he was expected to be at work at the scheduled time rather than being late and being allowed to work past the scheduled shift end to make up for this.

His reason for continued tardiness was lack of transportation. His failure to pay traffic fines resulted in his license being invalid and he depended on his girlfriend, who worked mornings, to get him to work. Matters of purely personal consideration, such as lack of transportation, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984).

Mr. Janes was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of June 7, 2012, reference 01, is affirmed. Zachary Janes is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs