

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICE SINGH
Claimant

APPEAL NO. 09A-UI-01752-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 01/04/09 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 22, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 28, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Morgan participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a night stocker for the employer from August 2, 2005, to January 2, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant received a verbal coaching for excessive absenteeism on May 12, 2007. She received a written coaching for excessive absenteeism on April 12, 2008, because she had seven absences during the previous six months. She was given a decision making day, the final warning under the employer's progressive discipline, on November 10, 2008, because she had 11 absences from July 25 to November 9, 2008.

After November 10, the claimant was absent from work on November 14 and 24. She was late for work on November 29, December 22, and December 29.

On January 1, 2009, the claimant was sick due to her diabetic conditions and was unable to work. She called in properly to report her absence.

As a result of the claimant's history of absenteeism, the employer discharged her on January 2, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides that 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's final absence was due to illness and was properly reported to the employer. The current act that led to her discharge was not misconduct.

DECISION:

The unemployment insurance decision dated January 22, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw