

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

SUZANNE T JACKSON
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DES MOINES IA 50315-3702

WAL-MART STORES INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02057-CT
OC: 01/22/06 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 February 7, 2006, reference 01, which held that no disqualification would be imposed regarding Suzanne Jackson's separation from employment. After due notice was issued, a hearing was held by telephone on March 9, 2006. Ms. Jackson participated personally. The employer participated by Debbie Piercey, Personnel Manager; Matthew Meyer, Co-Manager; and Doris Wheeler, Deli Manager. The hearing record was left open for additional evidence. Telephone records submitted by Ms. Jackson were received and admitted as Exhibit A. The hearing record was closed on March 16, 2006.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Jackson began working for Wal-Mart on June 27, 2003 and last performed services on December 18, 2005. She was last employed full time as a deli sales associate. Ms. Jackson returned to work from vacation on December 17. She heard from others that she was going to receive a "decision-making" day because of her attendance. No supervisor indicated she was going to be disciplined. Ms. Jackson did not attempt to discuss with management what she heard from coworkers regarding planned disciplinary action. Ms. Jackson worked on December 18 but still did not question anyone as to whether there was planned disciplinary action. No one advised her on December 18 that she was going to be disciplined.

Ms. Jackson became upset that her coworkers knew she was going to be disciplined but that management had not discussed the matter with her. Therefore, she did not report for work or contact the employer on December 21 or December 22, her next scheduled work days. She could have worked and could have called the employer on both days but did not do so. On December 23, she contacted the store manager and explained why she had not been at work. She was told to contact the manager again on December 24. When she contacted the manager on December 24, she was told that he was going on vacation and that a decision regarding her employment would be made by her department manager. Ms. Jackson did not contact the employer after December 24 because she heard from coworkers that she had been fired. When she picked up her final paycheck on December 29, she told the personnel manager that she had left employment due to personal problems at home.

Ms. Jackson had been disciplined in the past regarding her attendance. The last such disciplinary action was approximately six months prior to her separation. Continued work would have been available if she had continued reporting for work or had notified the employer of her intentions.

Ms. Jackson has received a total of \$1,120.00 in job insurance benefits since filing her claim effective January 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Jackson was separated from employment for any disqualifying reason. It was the employer's decision that she would not be allowed to continue in the employment. Therefore, the separation is considered a discharge. 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). Ms. Jackson was separated from the employment because of unreported absences. The employer was clearly incorrect as to the dates on which Ms. Jackson was a "no call/no show." She was not absent for three consecutive days without notice. Therefore, the employer's three day, "no call/no show" rule was not involved.

Ms. Jackson was absent for two consecutive shifts without notice. She did not have reasonable cause to be absent from work on either December 21 or December 22. Even if she felt she had good cause to be absent, there was no justification for not notifying the employer of the intended absences. Ms. Jackson was upset because she felt coworkers had been advised of intended disciplinary action but that issue had not been presented to her. Although she

contended that her managers would not talk to her, this contention has not been established. The fact is that she made no attempts to discuss the matter with management. It was not a situation where she approached management but management refused to talk with her. Ms. Jackson had ample opportunity on December 17 and December 18 to question management as to the accuracy of what she was hearing from coworkers regarding discipline. Instead, she chose to simply not go to work. Her conduct in remaining off work for two days without notice to the employer constituted a substantial disregard of the standards the employer had the right to expect. Having previously been disciplined regarding her attendance, Ms. Jackson knew or should have known the unreported absences might cause the loss of employment.

For the reasons stated herein, the administrative law judge concludes that Ms. Jackson was discharged for disqualifying misconduct. Accordingly, benefits are denied. Ms. Jackson 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 February 7, 2006, reference 01, is hereby reversed. Ms. Jackson 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. Jackson has been overpaid \$1,120.00 in job insurance benefits.

cfc/tjc