

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMELIA GIVENS

Claimant

APPEAL NO: 13A-UI-00241-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/08/12

Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's December 27, 2012 determination (reference 03) that disqualified her from receiving benefits and the employer's account was exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Shane Peterson, a shift manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes 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 May 2012. The employer hired the claimant to work full time. The claimant had family issues and asked to go from full time to part time. The employer accommodated the claimant's request for part-time work in October. The part-time job the employer gave the claimant was an overnight stocker job. This was the only part-time job the employer had available and included weekend work. After the claimant told the employer she would have problems working weekends, the employer said it would see what could be done about scheduling her other than weekends after the holiday season. The claimant accepted the part-time overnight stocker position and worked some weekends.

The claimant learned about the employer's attendance policy when she started working. The employer also goes over the attendance policy when an employee receives an attendance warning. The employer's policy informs employees after they receive a third written warning for any infraction, the next infraction of any kind may result in an employee's discharge.

On October 14, the employer gave the claimant her second written warning for unexcused absences. The claimant received this written warning after she called in on October 13 to report she was unable to work. The October 13 absence was her fifth unapproved absence in six months. The claimant understood the employer could discharge her for on-going attendance issues after receiving the October 14 warning.

On November 16, 2012, the claimant received her third written warning for using her cell phone on the floor. The employer does not allow employees to use cell phones on the floor and considered this incident an act of insubordination.

The claimant was scheduled to work on November 21, 24 and 25. The employer does have any record that the claimant called on November 21 or 25 to report she was unable to work as scheduled. On November 24, the claimant initially called to report she would be late for work. Later, the claimant called to report she was unable to work as scheduled on November 24.

The claimant does not remember why she did not work on November 21. The claimant has problems finding someone to take care of her children on the weekends. Her sister-in-law takes care of her children during the week, but is not reliable to take care of the claimant's children during the weekend. When the claimant's 14-year-old son is home, he is responsible for taking care of his siblings on the weekends when the claimant worked the overnight shift. The claimant's son was not always home during the weekends because of basketball tournaments.

The claimant was surprised that she was scheduled to work on November 24 because she told the employer she had childcare problems if she worked weekends. Even though the claimant did not want to work weekends, these were hours the employer needed the claimant to work. The claimant did not work on November 24 and 25 because she did not have anyone to take care of her younger children during these shifts.

On November 27, the employer discharged the claimant because during the last six months she had eight unapproved absences and had not called or reported she was unable to work on November 21 and 25.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

When the claimant started having attendance issues as a full-time employee because of family issues, the employer accommodated her request to work part time. The only part-time position the employer had available was as an overnight stocker that involved weekend hours. Although the claimant explained that she had problems with childcare on the weekends, she accepted this part-time position. The employer told her that her hours might change after the holiday season.

The claimant worked some weekends, but her childcare provider during the week, her sister-in-law, was unreliable during the weekends. Sometimes the claimant's 14-year-old son stayed with his younger siblings when the claimant worked overnight weekend hours, but he was not always home on the weekends. The claimant did not always know when her son would be home.

As a result of continuing childcare issues, the claimant received a written warning in mid-October for having five unapproved absences the last six months. She understood the employer could discharge her if she continued to have unapproved absences. On November 21

and 25, the claimant did not call or report to work. On November 24, the claimant notified the employer that she was unable to work. As a result of having eight unapproved absences in six months and failing to call the employer on November 21 and 25, the employer discharged the claimant on November 27 for excessive unexcused absenteeism.

Even though the claimant had childcare issues, she asked for part-time work and accepted the overnight stocker position. The employer only indicated they would try to schedule her other hours after the holiday season. After the claimant accepted the part-time position it was her responsibility to arrange for dependable childcare, which she was unable to do. The claimant was in a tough situation but her failure to notify the employer on November 21 and 25 to report she was unable to work as scheduled, in addition to the number of her unexcused absences amounts to work-connected misconduct for unemployment insurance purposes. As of November 25, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 27, 2012 determination (reference 03) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 25, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css