

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER BERRETT
Claimant

APPEAL NO: 09A-UI-17280-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10-11-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 3, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 23, 2009. The claimant participated in the hearing. Josh Hurtado, Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time in-stock associate for Wal-Mart from January 8, 2008 to October 9, 2009. The employer allows four absences in a rolling six-month period before a verbal warning is issued; six absences in a rolling six-month period before a written warning is issued; and seven absences in a rolling six-month period before a decision-making day is given. A full day absence counts as one point and three incidents of tardiness or leaving early count as one point. The employer permits a 15-minute grace period when employees are arriving for their shifts. The claimant was absent October 9, 2008; January 11, 2009; April 9, 2009; and July 28, 2009. He accumulated three incidents of tardiness and was assessed one point December 29, 2008; January 28, 2009; February 20, 2009; July 12, 2009; August 2, 11, 18 and 25, 2009. He left early five times and was assessed two points between July 18 and July 25, 2009. The claimant received a verbal warning in writing for attendance June 22, 2008; a written warning for attendance March 16, 2009, and a decision-making day for attendance August 27, 2009. The claimant signed for each of the warnings and the decision-making day. The employer met with the claimant October 9, 2009, because he was 18, 20 and 30 minutes tardy on three days that week. The employer intended to verify the dates and times of arrival before terminating the claimant's employment but the claimant became upset and stated he quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer allows employees a 15-minute grace period and its timekeeping computer does not flag any time clocked in prior to that as an incident of tardiness. The claimant had at least 27 incidents of unexcused tardiness in excess of 15 minutes and four unexcused absences between December 29, 2008 and October 9, 2009. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The November 3, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css