

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MAKAYLA L TEAGUE**

Claimant

**APPEAL 16A-UI-04790-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 04/03/16**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 21, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for excessive, unexcused absenteeism after being warned. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2016. The claimant, Makayla Teague, participated. The employer, Wal-Mart Stores, Inc., participated through Moses McBride, Store Manager.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an overnight CSM, from May 20, 2004 until this employment ended on March 21, 2016, when she was discharged.

Claimant was a no-call/no-show for her scheduled shifts on March 17, 2016 and March 18, 2016. Claimant testified that she was unconscious and was unable to call in or go to work. Claimant resumed consciousness at some point on March 18, when the police knocked on her door but she does not recall anything specific about this. Claimant called and spoke with an assistant manager the morning of March 19, 2016 and asked if she was going to be discharged. The assistant manager said he needed to speak with McBride and would follow up with claimant. Claimant was told not to report back to work until she heard from management. Subsequently, claimant was discharged.

The employer enacted a new attendance policy on March 2, 2016. At that time, claimant had a conversation with McBride and learned how the new policy worked. Under the new attendance policy, each employee could accrue eight points prior to discharge; an employee would be discharged upon receiving a ninth point. A properly reported absence would receive one attendance point and a no-call/no-show would receive four attendance points.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those

“with appropriate notice.” *Cosper* at 10. See, *Gimbel v. Emp’t Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant’s late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep’t of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

An employer’s no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, in this case claimant was unable to report to work or to report her absence because she was unconscious. Claimant’s failure to call in prior to her shift was justified, as she was physically unable to report the absence. Other than claimant’s absences on March 17 and 18, both of which were not reported due to unconsciousness, claimant only had one absence and this sole absence was due to illness. Claimant’s absences under the employer’s new attendance policy were related to properly reported illness or other reasonable grounds. Therefore, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The April 21, 2016 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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