

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JADRANKA ATAJIC**  
Claimant

**APPEAL NO. 14A-UI-07185-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 06/15/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated July 2, 2014, (reference 01), which held that Jadranka Atajic (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2014. The claimant participated with Attorney Amy Pellegrin. Semso Suvic interpreted on behalf of the claimant. The employer participated through Personnel Manager Marilyn Powers, Shift Manager Andy Surat, and Employer Representative Ryan Flanery. Employer's Exhibits One through Six were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time cashier from February 9, 2000, through June 17, 2014, when she was discharged due to excessive absenteeism with a final absence on June 14, 2014. The employer's no-fault attendance policy provides that employees can be terminated for having over six unexcused absences in a rolling six-month period and/or after three written warnings.

The claimant received her first warning for absenteeism on November 5, 2010. She received a second written warning for absenteeism on September 19, 2013, and a third written warning for absenteeism on March 14, 2014. The third warning provided that termination would occur if the behavior continued. Subsequent to the final warning, the claimant was absent another 16 days before she was discharged. New management took over and began to enforce the company policies.

The employer's attendance report codes the absences with a reason code number and absences due to work-related injuries are listed with a 55 reason code. The claimant contends her absences were mostly due to her worker's compensation injury but she had no 55 reason codes. Her husband was in a motor vehicle accident on March 12, 2014, and five of the last 17 absences were due to her husband's inability to drive himself to medical appointments. The remaining absences were due to the claimant's medical issues.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 17, 2014, for excessive unexcused absenteeism. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). The claimant certainly had excessive absences but the issue that needs to be determined is whether these excessive absences were also unexcused.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. 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. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). The majority of the claimant's absences and her final absence were due to properly reported illness. Consequently, work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

#### **DECISION:**

The unemployment insurance decision dated July 2, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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