

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE D WRIGHT
Claimant

APPEAL NO. 09A-UI-00714-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/14/08
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated January 7, 2009, reference 01, which held that no disqualification would be imposed regarding Stephanie Wrights' separation from employment. After due notice was issued, a hearing was held by telephone on February 3, 2008. Ms. Wright participated personally. The employer participated by Ryan Collison, Co-Manager. The hearing record was left open to allow the employer an opportunity to verify the confirmation numbers provided by Ms. Wright. The hearing reconvened on March 13, 2009 with Ms. Wright again participating personally.

ISSUE:

At issue in this matter is whether Ms. Wright was separated from employment for any disqualifying reason.

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. Wright was employed by Wal-Mart from July 21, 2007 until December 11, 2008. She was last employed full time as a night stocker. She was discharged because of her attendance. She was last warned about her attendance on August 30, 2008.

Ms. Wright properly reported the intent to be absent on December 6 and 7 due to illness. She received confirmation numbers when she called to report the absences. She was not scheduled to work December 8 and 9. She was discharged when she returned to work on December 11, 2008. Attendance was the only reason given for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Ms. Wright was discharged from employment. An individual who was discharged is disqualified from receiving benefits if she was discharged 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). An individual who was discharged because of

attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and it must be properly reported. 871 IAC 24.32(7). Moreover, there must be a current incident of unexcused absenteeism to support a disqualification from benefits.

In the case at hand, Ms. Wright's discharge was prompted by her absences of December 6 and 7. She provided confirmation numbers to prove that she called in. The hearing record was left open for the specific purpose of allowing the employer the opportunity to provide evidence as to whether the numbers were valid. The employer did not provide evidence that the numbers were fraudulent or that they were given in response to absences other than those of December 6 and 7. Therefore, the numbers are considered valid and establish that Ms. Wright did, in fact, call in on December 6 and 7.

Ms. Wright testified that she was not scheduled to work December 8 and 9. The employer failed to establish to the contrary. Therefore, her failure to be at work or to call on either date was not misconduct. The employer failed to establish that Ms. Wright had any unexcused absences after the warning of August 30, 2008. It is concluded, therefore, that a current act of misconduct was not established by the evidence. As such, no disqualification is imposed.

DECISION:

The representative's decision dated January 7, 2009, reference 01, is hereby affirmed. Ms. Wright was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs