

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSANDRA M DEPYPER
Claimant

APPEAL NO: 13A-UI-05845-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/21/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 9, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 1998. She initially worked in Minnesota as a pharmacy technician. She transferred to Iowa for her husband's job in June 2012. When the claimant moved to Iowa, she did not have any family or friends to help her when any of her four children became ill. Prior to her employment separation, the claimant worked part time or 20 to 32 hours a week.

In December 2012 or January 2013, the claimant received a warning about her attendance. The claimant acknowledged that during the winter months, November through January, her children were ill and she was absent when she had to pick them up from school or daycare. Since the claimant had transferred to Iowa, she believes she had eight absences when she received this warning.

After the claimant received the warning, she may have been absent two more times when a child was ill. She does not know when these absences occurred. On April 16, 2013, the employer discharged her for excessive absenteeism.

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).

The claimant established reasonable grounds for her absences. Since the employer did not testify at the hearing, the evidence does not establish when the claimant's most recent absences occurred. The employer may have had justifiable business reasons for discharging the claimant, but the evidence does not establish that she committed work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 9, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that she committed a current act of work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css