

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER HIRSCH**  
Claimant

**APPEAL NO: 16A-UI-06579-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 05/15/16**  
**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 June 3, 2016, 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 July 13, 2016. The claimant participated in the hearing. Nicole Annis, Human Resources 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 part-time dairy sales associate for Wal-Mart from January 28, 2011 to April 26, 2016. He was discharged from employment due to a final incident of absenteeism that occurred on April 24, 2016.

The employer changed its attendance policy effective March 1, 2016. The policy is a no-fault policy and employees are allowed nine points in a six-month rolling period. A properly reported full day absence is assessed one point and an incident of tardiness of between 10 minutes and 30 minutes is assessed one-half point. Employees have access to their point totals on the employer's computers or on their own home computers. The employer no longer warns employees about their attendance and expects employees to keep track of their own point totals by checking its employee website.

The claimant was tardy March 12, 13, 15, 16, 17, 22, 24, 26, 29, 30, 31, April 2, 17, 19, and 24, 2016. He was absent due to properly reported illness March 19, 2016, and absent April 18, 2016 because he had requested the day off to take an actuarial exam but his request was denied.

The claimant testified he “lost (his) sense of caring” about his job after receiving a coaching in late February or early March 2016, which resulted in him no longer being allowed to perform his duties in the dairy department but instead being required to sweep the inside and outside of the store and clean the restrooms. He felt the employer demoted him without reducing his pay and was also discouraged because after being with the employer for five years he had not been promoted or received the raises he felt he earned. The employer did not schedule the claimant the week of April 9, 2016, and after being away from work that week his apathy regarding his job increased.

After the claimant’s incident of tardiness April 24, 2016, which placed him at nine and one-half points, the employer terminated his employment April 26, 2016.

### **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 § 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 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 claimant was disheartened about his job after effectively being demoted from the dairy department to sweeping the inside and outside of the store and cleaning restrooms. He worked for the employer for over five years without receiving the raises and promotions he felt he deserved. While the claimant’s disappointment is certainly understandable, the way he responded to the problem, by being tardy on 15 occasions between March 12 and April 24, 2016, is not acceptable and was not the proper way to handle the situation. The claimant had the option to quit his job but as long as he continued to work for the employer he had a responsibility to be at work on time.

The employer has established that the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The June 3, 2016, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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