

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON R CHASE
Claimant

APPEAL NO. 09A-UI-03045-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 01/04/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 11, 2009 decision (reference 01) that concluded Jon R. Chase (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2009. The claimant participated in the hearing. Maria Green, a co-manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 1, 2008. The claimant worked as a full-time associate. Travis Newcomb supervised the claimant. The employer's attendance policy informs employees excessive absenteeism is not tolerated by the employer. In accordance with the employer's policy, during a rolling six-month time frame an employee receives a written warning after accumulating five attendance occurrences. The employee receives a decision day after having six attendance occurrences. The employer discharges an employee when the employee has seven attendance occurrences.

On August 9, 2008, the employer gave the claimant a decision day for having eight attendance occurrences. The claimant had been absent eight times because he had been ill or stayed home with his children when they were ill. The claimant indicated he understood his job was in jeopardy when he told the employer he would be at work as scheduled.

On September 19, 20, 21, and 25, the claimant informed the employer he was unable to work. The claimant went to California to take care of a situation with his child and ex-wife. When the claimant returned he talked to Newcomb about these absences. On September 28 and October 26, the claimant notified the employer he was unable to work. The claimant stayed

home these days because his children were ill. On November 3, 2008, the claimant notified the employer he was unable to work because he was ill. On December 20 and 21, the claimant was ill and unable to work. He properly notified the employer that he was unable to work.

On December 26, 2008, the employer discharged the claimant for excessive absenteeism. The claimant had been absent 18 days.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

As of August 9, 2008, the claimant knew or should have known his job was in jeopardy because of repeated attendance issues. The employer did not discharge the claimant when he went to California for personal reasons or stayed home to take care of his children when they were ill. The employer waited to discharge the claimant until he was ill and unable to work on December 20 and 21.

The employer established business reason for discharging the claimant. The claimant was not a dependable or reliable employee when he had 18 attendance occurrences. The claimant did not, however, commit work-connected misconduct. The most recent absences on December 20 and 21 occurred because the claimant was ill and unable to work. The law specifically states that inability or being unable to work does not constitute work-connected misconduct. Since the claimant properly notified the employer he was ill and unable to work, the claimant did not intentionally disregard the employer's interests. The employer discharged the claimant for

reasons that do not amount to a current act of work-connected misconduct. Therefore, as of January 4, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's February 11, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of January 4, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw