

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANSON M GUNN**  
Claimant

**APPEAL NO. 12A-UI-02290-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/22/12**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Branson M. Gunn filed a timely appeal from an unemployment insurance decision dated February 29, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 21, 2012, with Mr. Gunn participating. Pull Manager Christine Banker participated for the employer, Wal-Mart Stores, Inc.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Branson M. Gunn was employed by Wal-Mart Stores, Inc. from August 7, 2010, until he was discharged January 31, 2012. He last worked for the company November 12, 2011. He was arrested that day and incarcerated until approximately January 18, 2012. He has pled guilty to a domestic assault charge. Other charges are still pending. Mr. Gunn was scheduled to work during the time that he was incarcerated.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

Iowa Code section 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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Not all absences are treated equally for unemployment insurance purposes. Absence due to matters beyond an individual's control, such as personal illness, are deemed to be excused, provided the individual properly reports the absence to the employer. Absences due to matters of personal responsibility, such as failing to obey the law, are deemed unexcused regardless of whether the individual notifies the employer. The evidence here establishes that the claimant was discharged because of absence that occurred because of his incarceration. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated February 29, 2012, reference 01, is modified. The date of separation was January 31, 2012, not November 12, 2011. Benefits are withheld until the claimant 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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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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