

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNY L GATLIN
Claimant

APPEAL NO. 09A-UI-10835-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 06/21/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jeanny Gatlin, filed an appeal from a decision dated July 23, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 13, 2009. The claimant participated on her own behalf. The employer, Wal-Mart, did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jeanny Gatlin was employed by Wal-Mart from September 23, 2008 until May 26, 2009 as a part-time cashier. She requested, and was granted, a medical leave of absence in March 2009, and hand-delivered the documentation from her doctor to the personnel manager, Micky.

On May 24, 2009, she notified the co-manager, Jay, she had been released to return to work and he told her to start on May 26, 2009. When she reported for work on that day, the customer service manager, Jonna, told her she was fired for being no-call/no-show to work for 15 days.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer has not presented any evidence to show the claimant was not, in fact, on approved medical leave of absence, or any dates on which she was no-call/no-show to work. The employer has not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of July 23, 2009, reference 01, is reversed. Jeanny Gatlin is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw