

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
PEGGY HOECK Claimant	APPEAL NO: 17A-UI-01052-JE-T
WAL-MART STORES INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 01/08/17 Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 25, 2017, 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 February 17, 2017. The claimant participated in the hearing. Margaret Neilson, Personnel 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 full-time cashier for Wal-Mart from March 23, 2011 to January 7, 2017. She was discharged for exceeding the allowed number of attendance occurrences.

The employer uses a no-fault, occurrence based attendance policy and employees are discharged upon reaching nine occurrences during a rolling six month period. Employees are expected to check the online program to keep track of the number of absences incurred. When an employee logs into the system it is documented and the employer considers that to be a warning.

The claimant had her teeth pulled September 8, 2016, and was absent September 9, 2016; she is not sure of the reason for her absence September 23, 2016; she was absent due to illness October 5, 2016; she is not sure of the reason for her absence November 9, 2016; and she was absent due to illness November 26 and December 6, 2016. The claimant was absent December 17 and December 19, 2016, and January 4, 2017, because it was extremely cold outside and she walked six blocks to catch the bus and felt it was too cold to go through that routine on those three days. With her January 4, 2017, absence the claimant reached nine occurrences and the employer terminated her employment January 7, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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).

While four of the claimant's nine absences were due to properly reported illness, she could not recall the reason for two other absences and the final three were due to the fact it was cold outside and the claimant did not want to walk the six blocks to the bus stop and wait a few minutes for the bus to arrive in order to get to work. Although the administrative law judge is sympathetic to the claimant's aversion to extremely cold weather, living in Iowa it is a fact of life that there will be temperature extremes and as employees we must adjust. It is not a good cause reason for not showing up for work.

The claimant's final three absences were not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The January 25, 2017, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed
je/rvs