

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS A BUCHER
Claimant

APPEAL NO: 08A-UI-05348-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/27/08 R: 12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Douglas A. Bucher (claimant) appealed a representative's May 29, 2008 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 18, 2008. The claimant participated in the hearing. Diane Barton, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. 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 June 10, 1998, as an order filler. The claimant worked as a full-time weekend employee. The claimant received information about the employer's attendance policy. The employer's attendance policy indicated that when a weekend employee had four attendance occurrences, the employee would receive a verbal warning for attendance issues. When an employee had six unexcused absences, or missed 61 to 72 hours of work, the employee received a written warning for attendance issues. At eight attendance occurrences or 81-90 hours of absence, the employee received a final written warning or a decision day.

On March 28, 2008, the claimant signed paperwork indicating the employer gave him a final written warning or a decision day for his absences on March 15 and 16. (Employer Exhibit One.) The claimant understood that if he had another unexcused absence, the employer could discharge him.

On March 14, the claimant came to work sick. On March 15 and 16, the claimant was too ill to work. He notified the employer that he was unable to work these two days. When the claimant

came back to work, he gave the employer a doctor's statement verifying he had been ill but had been released to work as of March 17. The claimant asked the employer for a leave of absence for the days he had been ill. Since the claimant had not worked a minimum number of hours during the past year, the employer denied the claimant's request for a medical leave of absence or an excused absence for March 15 and 16.

On April 19, on his way to work, the claimant had an accident with a deer. The claimant did not receive any personal injuries, but his vehicle was damaged and had to be repaired before he could drive it. The claimant notified the employer about the accident and that he did not have a vehicle to get to work. The claimant lives 58 miles from work. The claimant did not have access to another vehicle on April 19 and 20. He properly notified the employer he was unable to work both days. The claimant's vehicle was returned to him before Friday, April 25, 2008.

The employer considered the April 19 and 20 absences as unexcused. In accordance with the employer's attendance policy, the employer discharged the claimant on April 25 for excessive absenteeism.

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).

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).

The employer established business reasons for discharging the claimant. In accordance with the employer's attendance policy, the employer had justifiable reasons to discharge the claimant. For unemployment insurance purposes, the claimant did not intentionally or substantially disregard the employer's interests. The claimant's absences in March and April were beyond his control. Each time the claimant properly notified the employer he was unable to work. The claimant had no control over being sick and unable to work in March. On April 19 the claimant planned to work, but was involved in an accident that put his vehicle out of commission on April 19 and 20. The facts do not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of April 27, 2008, he is qualified to receive benefits.

DECISION:

The representative's May 29, 2008 decision (reference 02) is reversed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of April 27, 2008, 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/css