

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRADLEY M LANE
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 14A-UI-07184-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/15/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed an unemployment insurance decision dated July 2, 2014 (reference 01) which held that Bradley Lane (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2014. The claimant participated in the hearing with his cousin Season Ford. The employer participated through Personnel Manager Marilyn Powers; Shift Manager Andy Surat; and Employer Representative Ryan Flanery. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired full time as an associate on November 8, 2006 but voluntarily reduced his status to part time due to medical reasons. He worked as a bicycle assembler at the time of his termination on June 9, 2014. The employer discharged the claimant due to excessive absenteeism, with a final incident on June 8, 2014 when he was absent due to properly reported illness. The employer witnesses testified the claimant had previously received three written warnings for attendance but could not provide the dates of those warnings because the records are missing. Consequently, the employer could not provide the dates of any other absences.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 9, 2014, due to excessive unexcused absenteeism. Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). The employer only provided evidence of one absence, which was due to properly reported illness. A single unexcused absence does not constitute excessive unexcused absenteeism. *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). Additionally, absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer failed to meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 2, 2014 (reference 01) is affirmed. The claimant was discharged but misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can