

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MITCHELL D DRALLE
Claimant

APPEAL NO: 06AUI-UI-08847-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 07/30/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mitchell D. Dralle (claimant) appealed a representative's August 22, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance 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 September 19, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. John Jacobson, the night assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 November 12, 2004. The claimant worked full time as a night floor technician. Throughout the claimant's employment, Jacobson has been his supervisor.

Initially, the claimant did not have any attendance problems. As late as October 2005, the claimant had not been absent from work. When the claimant worked, he did his job without any problems.

In mid-June 2006, the claimant started missing work. On July 4, the claimant told the employer he had an addiction problem that he was trying to overcome. As a result of his addiction, the claimant was homeless and living out of his car. On July 9, the employer gave the claimant a warning because he had been absent seven days since June 12, 2006. The employer usually gives an employee a warning when they miss three days in a month.

On July 10, 11 and 16, the claimant did not report to work or contact the employer. On July 17, the employer told the claimant that his job was in jeopardy because of continued attendance problems. The employer told the claimant to take the next day off to decide if the claimant would commit to working as scheduled. After his paid day off, the claimant came back to work indicating he wanted to continue working for the employer. The claimant then worked as scheduled until July 24.

The claimant was scheduled to work on July 25. He contacted the employer to report he would be late for work. The claimant did not report to work on July 25 and he did not again contact the employer. The claimant picked up his check, but did not again report to work or contact the employer about the status of his employment. On July 26, the employer no longer considered the claimant an employee, because of 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 made the decision to end the claimant's employment as of July 26 because of the claimant's excessive absenteeism. The employer discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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).

The claimant knew or should have known his job was in jeopardy when the employer gave him a paid day off from work to decide if wanted to continue his employment. For a few days, the claimant reported to work as scheduled. The claimant's failure to report to work on July 25 or to contact the employer again when he decided he could not report to work after all amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of July 30, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 22, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 30, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw