

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L WILLIAMS
Claimant

APPEAL NO. 10A-UI-03963-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/03/10
Claimant: Appellant (2)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 3, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 29, 2010. Claimant participated. Jeff Wright was a witness on behalf of the claimant. Employer participated by Brian Pollock, operations manager Sam's Club—Davenport, Iowa. The record consists of the testimony of Brian Pollock; the testimony of Amanda Williams; the testimony of Jeff Wright; and Employer's Exhibits 1-15.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Sam' Club Warehouse store located in Davenport, Iowa. The claimant was hired on November 16, 2008, as a cashier. She was terminated on April 20, 2009, for violation of the employer's attendance policy.

The employer has a no fault attendance plan that assigns points for tardiness and absences. When an employee reaches four points, coaching or a verbal warning is given. Five points leads to a written warning and six points is deemed a decision day. When seven points are accumulated, the employee is terminated. The claimant reached seven points on April 17, 2009. As a result, she was terminated.

The claimant has a long history of chronic migraine headaches for which she seeks a physician's care. The claimant's absences, which were properly reported to the employer, were due to migraine headaches.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The absenteeism must be both excessive and unexcused. The concept includes tardiness and leaving early. Absences due to illness and other excusable reasons is deemed excused if the employee properly notified the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

Although the employer can show excessive absenteeism, the claimant's absenteeism is excused under Iowa law. Personal illness is an excusable reason. The claimant testified that her absences from work were due to chronic migraine headaches. Although the employer may deem this an occurrence or an absence for purposes of its point system, the law deems absence for personal illness excused. The employer cannot show excessive unexcused absences. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 3, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs