

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**KAREN L STEVENSON**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 17A-UI-04551-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/02/17  
Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 18, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2017. Claimant participated. Employer participated through assistant manager Andron Barnett.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 27, 2012. Claimant last worked as a part-time people greeter. Claimant was separated from employment on March 31, 2017, when she was terminated.

Employer has an attendance policy stating an employee who has more than 8.5 attendance points in six months will be terminated. Claimant was aware of the policy and claimant had been verbally warned regarding her attendance in February 2017.

On March 5, 2017, claimant was late for work. Claimant had no reason for being late. Claimant properly reported the incident of tardiness via employer's hotline. The incident put claimant at nine attendance points.

Employer's attendance tracking system was not operating correctly for about the next week and a half. After the system began working, it took employer some time to review the records.

By March 31, 2017, employer realized claimant incurred nine attendance points in violation of its policy and terminated her employment.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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(8) provides:

(8) Past acts of misconduct. 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.

Here, the employer knew about claimant's tardiness on March 5, 2017, as claimant properly reported the absence via employer's hotline. Employer knew that claimant was very close to exceeding her allowable attendance points. However, employer's electronic system for calculating attendance points was not operable. Instead of taking steps to ascertain whether claimant exceeded the allowable points, employer waited for the electronic system to be repaired. The electronic system was only out for approximately ten days, but there was still a lapse of 26 days between the last attendance infraction and claimant's termination. Employer has not established claimant was terminated for a current or final act of misconduct.

## **DECISION:**

The April 18, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed  
cal/scn