

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH E BARUTH
Claimant

APPEAL NO: 13A-UI-04574-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/24/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 9, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Jeremy McDowell, the club manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2011. She worked as a part-time cashier. When the claimant started working, she received a copy of the employer's attendance policy. The policy informs employees they will be discharged for excessive absenteeism if they accumulate seven absences in a rolling six-month time frame. The employer considers three tardies to equal one absence.

The claimant understood the employer would give her warnings or counsel her if she developed an attendance problem. The claimant received a written warning for other issues. On February 22, 2012, the employer gave her a written warning for her attendance. She did not receive any other written warnings for attendance. The claimant understood that if the employer requested a doctor's statement and the employer provided a doctor's note, the absence would be excused. Prior to March 23, 2013, the claimant did not understand her job was in jeopardy for on-going attendance issues.

During the last months of her employment, she was 15 minutes or more late for work on December 3, 18, 22, 2012, and March 6, 2013. The claimant notified the employer the following days she was ill and unable to work - January 9, February 9, March 5, 15, 22 and 23. On January 15, the claimant notified the employer she was unable to work for personal reasons.

When the claimant reported to work on March 26, 2013, the employer discharged her for excessive absenteeism. Since January 2013, the claimant was absent seven days.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)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 employer had justifiable business reasons for discharging the claimant. In accordance with the employer's policy, the claimant was excessively absent and she violated the employer's attendance by having seven absences in a three-month time frame.

For unemployment insurance purposes, the claimant was absent because she was ill and unable to work. She properly reported her absences and did not intentionally disregard the employer's interests. The claimant did not commit work-connected misconduct. As of March 24, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 9, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 24, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>
Facts About Unemployment Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>
Employer account access and information: <https://www.myiowauui.org/UITIPTaxWeb/>
<http://www.iowaworkforce.org/ui/uiemployers.htm>