

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARNELLE M LESTER
Claimant

APPEAL NO. 08O-UI-06799-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 08-19-07 R: 03
Claimant: Appellant (2)**

Iowa Code section 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on August 11, 2008. The claimant did participate. The employer did not participate.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a third shift overnight stocker full time beginning October 26, 2007 through April 26, 2008 when she was discharged.

The claimant was late to work on April 23 because she was pulled over by the police and not allowed to continue on to work. The claimant was driving a car that was owned by someone with a warrant out for his arrest. She was driving the car with permission. When the claimant was pulled over, the police were looking for the owner of the car to arrest him. The police took the claimant's cell phone and would not allow her to continue on to work because they believed she would notify the owner of the car that they were going to serve an arrest warrant on him. The claimant was detained until the arrest warrant was served. She was then given her cell phone back and was allowed to pick up another car to continue to work. When she arrived at work the claimant told her supervisor what had occurred. The claimant was allowed to continue working until two days later when she was discharged for excessive attendance points.

The claimant had last been warned about being tardy on March 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

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

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The claimant was not tardy on April 23 due to anything within her control. The police detained her not due to any wrong doing on her part so she could not help but be late to work. Under these circumstances the administrative law judge cannot conclude that the claimant's last incident of absenteeism was unexcused. Because the employer did not establish the last incident was unexcused, the excessiveness standard has not been met. Benefits are allowed.

DECISION:

The May 19, 2008, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs