

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PAMELA S RUDOLPH
1079 RIPLEY CT
MUSCATINE IA 52761

WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-05320-DWT
OC: 04/24/05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Pamela S. Rudolph (claimant) appealed a representative's May 16, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the employer discharged for the claimant for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2005. 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 she could be contacted to participate in the hearing. As a result, no one represented the claimant. Myron Milder, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 in March 2004. The claimant worked as a full-time cake decorator. Milder was the claimant's supervisor.

The claimant's had an attendance problem and the employer started the progressive disciplinary procedure for this issue. Due to the claimant's repeated failure to work as scheduled, the employer gave the claimant a final warning or decision day for attendance on November 12, 2004. After November 12, 2004, the claimant continued calling in sick on days she was scheduled to cover for another employee. On April 27, 2005, the claimant called in sick the tenth time since November 12. Each time the claimant called in, she reported she was unable to work because she did not feel well. The claimant knew her absence on April 27 made it very difficult for the employer to get the all the work that needed to be done that day. At this time, the employer noticed the claimant only called in sick when she was scheduled to cover for another employee. On April 28, 2005, the employer discharged the claimant for excessive absenteeism.

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. 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 her job was in jeopardy when she received her final written warning on November 12, 2004. After receiving the final written warning, the claimant was absent ten more time between November 12, 2004 and April 28, 2005. Even though the claimant properly notified the employer when she did not work as scheduled, the fact the claimant called in sick when she was scheduled to work for another employee is suspicious. Since the claimant did not participate in the hearing, a preponderance of the evidence indicates the claimant was able to work on days she called in sick. Therefore, in this case the claimant's excessive absenteeism amounts to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 24, 2005.

DECISION:

The representative's May 16, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 24, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/tjc