

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSA MCCLELLAN**  
Claimant

**APPEAL NO: 16A-UI-10876-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 09/04/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 26, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 20, 2016. The claimant participated in the hearing. Jeffrey Bower, Assistant Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time overnight stocker for Wal-Mart from October 13, 2015 to September 5, 2016. She was discharged for exceeding the allowed number of attendance points.

The employer's attendance policy allows nine points in a rolling calendar year before termination occurs. One full day absence results in one point; an incident of tardiness or leaving early between 10 minutes and 120 minutes in duration results in one-half point; an incident of tardiness or leaving early in excess of 120 minutes results in one point; and a no-call no-show absence results in four points. Points drop off after six months.

On April 21, 2016, the claimant called the employer and stated her husband was experiencing heart problems and she needed to stay with him; on May 10, 2016, the claimant left early because her husband had cardiac tests scheduled during the day in Des Moines; on May 17, 2016, the claimant was absent because her husband had heart surgery; on July 24, 2016, the claimant called to report she was ill and would not be in to work; on August 23, 2016, the claimant's autistic son was very ill and she notified the employer she needed to stay with him while they sought medical treatment. On August 29, 2016, the claimant's son was scheduled to have an echo cardiogram at the local emergency room. The technician came out and told the claimant her son needed to be flown by Life Flight to Des Moines because his heart rate and

blood pressure were so high. Because her son is autistic, he was upset by the strangers and the prospect of being flown to Des Moines so the medical personnel eventually decided he needed to go by ambulance and the claimant met him there where he was admitted to the cardiac intensive care unit. The claimant drove back late that night and stopped by Wal-Mart to talk to Overnight Manager Jared Peterson. She told him she would not be in August 30 and September 1, 2016, the next two shifts she was scheduled to work due to her son's hospitalization in the intensive care unit. Mr. Peterson stated he understood and he was going to see if he could get August 29, 2016, excused as well. After speaking to Mr. Peterson the claimant believed she was excused from work August 30, 2016, and consequently did not call the employer to report she would be gone that day. The employer deemed that absence a no-call no-show and the claimant was notified her employment was terminated September 5, 2016.

### **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 § 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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The nine points the claimant accumulated were all due to the illness of herself, her husband and her son. The claimant's husband was experiencing serious heart issues in April and May 2016 and it was not unreasonable that she needed to be with him during the initial episode, the testing that followed, and the surgery. Unfortunately, her son, who is autistic, developed a cold that turned into pneumonia before it was determined he was also having serious cardiac problems and was then taken to Des Moines and admitted to the cardiac intensive care unit. Her son is uncomfortable with strangers and due to the nature of his illness with the high heart rate and blood pressure it was imperative the claimant be there to try to calm him down so he could be treated and the treatment could work.

The claimant believed she had eight points after her absence August 29, 2016, due to two absences in March 2016, and knew her employment would be terminated upon another absence. She reported her August 30, 2016, absence when she spoke directly to Mr. Peterson the night of August 29, 2016, and explained she would be absent the following day. If she had received one point for a properly reported illness August 30, 2016, she would not have faced termination. The employer is now calling that absence a no-call no-show and assessed the claimant three additional points. The claimant reasonably believed she properly reported her August 30, 2016, absence when she went in and talked to Mr. Peterson about the situation with her son being hospitalized and notified him she would not be at work the following night.

Given that all of the claimant's seven absences were due to the properly reported illness of herself or her immediate family, the administrative law judge finds the claimant's absences were not excessive, unexcused absenteeism. Consequently, her actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The September 26, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs