

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC L NYONEE
Claimant

APPEAL NO. 10A-UI-06281-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/14/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 13, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 15, 2010. Employer participated by Travis Spahr, Operations Assistant Manager. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Travis Spahr.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a Wal-Mart store located in Windsor Heights, Iowa. The claimant was hired on June 28, 2008, as a part-time unloader. He was terminated on or about February 8, 2010, for violation of the employer's attendance policy. His last day of work was January 19, 2010.

The claimant was absent on the following days:

March 5, 2009 – no call/no show
April 3, 2009
April 21, 2009
July 19, 2009
July 23, 2009
December 11, 2009
January 4, 2010—no-call/no-show
January 19, 2010 – no-call/no-show

Prior to missing work on January 19, 2010, the claimant was at his final step in the employer's attendance policy. He had been informed that if he missed another day of work, he would be terminated. The final absence was a no-call/no-show. The claimant was aware of the employer's attendance policies and that he would be terminated for another attendance violation.

REASONING AND CONCLUSIONS OF LAW:

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(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.

Misconduct that leads to termination occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of personal responsibility, for example, transportation problems and oversleeping is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notified the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The evidence in this case has established excessive absenteeism. The claimant did not testify at the hearing and the reasons for his many absences are unknown. Even if the claimant was sick and therefore absent for the final two incidents prior to termination, he did not notify his employer that he would be absent and the reason for his absence. This makes his final two

absences unexcused. The employer has shown excessive unexcused absenteeism. Benefits are denied.

DECISION:

The decision of the representative dated April 13, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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