

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

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

Appeal Number: 05A-UI-04105-LT  
OC: 03-13-05 R: 03  
Claimant: Respondent (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 5, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 10, 2005. Claimant did respond to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer did participate through Gary Brimyer. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time deli-associate through March 18, 2005 when he was discharged. Claimant called his manager (not Gary Brimyer) on March 15 and said he was unable to report to work because of his disabled child's illness and the daycare's inability to provide care that

day due to the child's fever. Employer was aware of this situation and that claimant is a single father when it hired him. He also called his manager on March 16, 2005 although employer does not have information about a call on that date. When employees call in to report an absence, their name is placed on a dry erase board, which is transferred in approximately 24 hours to the Attendance Tracking Exception Report. (Employer's Exhibit 1) Employer warned claimant about his attendance on October 26, 2004 and December 16, 2004. Many, if not most, of the prior absences were related to claimant's child's disability and related illnesses.

#### 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

The employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Employer's dry erase board method of recording calls for absences is fraught with opportunity for mistaken or intentional erasure and the transfer of information to the written permanent absence report is yet another occasion upon which information may be lost or transferred incorrectly. Management cannot be reasonably expected to accurately recall which employee called in an absence on a given day, even if asked to recall such information within 24 hours. Thus, claimant's statement in the fact-finding interview about his calls to his manager on March 15 and 16 to report the absences is credible. Because the final absence was related to the properly reported illness of a disabled child, for which no childcare was available, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The April 5, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/sc