

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER T TUMILSON
Claimant

APPEAL NO. 13A-UI-12293-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09/29/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 22, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 25, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Lance Pals participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a stocker and cart clerk from April 2013 to September 29, 2013. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant was warned about his attendance after he was absent without notice to the employer on August 16 and 17. He contended that he had made time off requests for those days but there was nothing recorded.

The claimant was absent from work without notice to the employer on August 30, September 6, and September 13. The first opportunity the assistant store manager, Lance Pals, had to talk to the claimant about the absences based on their schedules was September 29. When he asked the claimant about his absences, the claimant said he had tried for about 30 minutes on August 30 to call in but the phone was busy. He had no explanation for his absences on September 6, and September 13.

The employer discharged the claimant on September 29, 2013, for excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Pals' testimony that the claimant had no explanation for his absences on September 6, and September 13 when he was confronted on September 29. I do not believe the claimant's testimony that he called in on these days. He had been previously warned about being absent without notice. Work-connected misconduct has been proven in this case.

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8). I concluded that the delay from the September 13 no-call/no-show until the claimant's discharge on September 29 was based on reasonable grounds considering the claimant's and the assistant manager's schedules.

DECISION:

The unemployment insurance decision dated October 22, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs