

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROY RAMSEY
Claimant

APPEAL NO: 11A-UI-11349-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07-24-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 20, 2011. The claimant participated in the hearing. Lisa Shinn, 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 full-time overnight maintenance associate for Wal-Mart from May 12, 2009 to July 1, 2011. The claimant received a verbal warning for attendance February 6, 2010, after accumulating eight unapproved absences within a six-month period of time. He received a written warning for attendance July 23, 2010, for having an additional seven unapproved absences. He received a decision-making day due to his attendance March 17, 2011. The claimant became eligible for his vacation May 12, 2011, and asked the employer May 20, 2011, if he could take his vacation because he was experiencing marital problems but his request was denied because the employer does not allow employees to take vacation during the 45 days preceding its annual inventory. He called in and reported he would not be at work June 14 through July 1, 2011. On July 1, 2011, the claimant went to the store and spoke to the day shift manager and a human resources associate and requested a leave of absence because his marriage was suffering due to his work schedule. The employer denied his request because it only allows personal leaves of absence for up to seven days and the claimant had already missed seven days at that point and could not provide a return to work date. Consequently, because the claimant was on his final warning for attendance, his employment was terminated July 1, 2011, for exceeding the allowed number of attendance occurrences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absences were not excused. While the claimant had good personal reasons for his absences between June 14 and June 24, 2011, it was not a good cause reason attributable to the employer. Therefore, the final absence, in combination with the claimant's history of absenteeism, is considered excessive and benefits must be denied.

DECISION:

The August 18, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css