

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHAN B. HAMMOCK
Claimant

APPEAL NO: 17A-UI-06473-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/28/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 15, 2017, 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 July 14, 2017. The claimant participated in the hearing with his wife/witness/current customer service manager Philanna Hammock. Duane Busby, Assistant Manager and Jodi Wilson, Human Resources 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 night stocker for Wal-Mart from August 3, 2001 to May 20, 2017. He was discharged for exceeding the employer's allowed attendance occurrences.

The employer has a no-fault attendance policy and absences due to illness count as unapproved absences. If an employee accumulates nine unapproved absences within a six month period his employment is terminated. The employer does not issue verbal or written warnings to employees but instead expects employees to keep track of their absences by checking the computer.

The claimant was absent because his grandfather was ill November 21, 2016; he was absent due to properly reported illness December 26, 2016, March 20, 2017, April 4 and April 5, 2017; he was absent because his wife's uncle died May 8, 2017; and he was absent because his wife was suffering severe asthma May 15, May 17 and May 18, 2017; for a total of nine occurrences, and the employer terminated his employment May 20, 2017.

The claimant's wife checked the claimant's attendance May 12, 2017, and believed he had five occurrences. The employer's system does not always show absences immediately and the

employee's manager may approve or unapprove an absence, which affects when the absence will appear on the employee's total on the computer.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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 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).

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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

Four of the claimant's absences were due to his own illness; one was due to his grandfather being very ill; one was due to the death of his wife's uncle; and the final three were due to his wife's severe, chronic medical condition as he took her to the emergency room May 15, 2017, due to her asthma combined with a slight case of pneumonia, and because she remained extremely ill, he stayed home with her May 17 and 18, 2017, as he believed there was a relatively good chance he would need to take her back to the hospital.

Additionally, the claimant's wife testified that when she checked his occurrence total online May 12, 2017, it showed he had five occurrences. He accumulated three additional absences the week of May 15, 2017, but reasonably believed he had eight occurrences instead of the nine required before termination occurs. The claimant's last absence before May 12, 2017, was on May 8, 2017, which gave the employer four days to enter his attendance occurrences before his wife checked the computer. Employees should be able to rely on the employer's online records if the employer chooses to abandon its policy of issuing warnings where point totals were clearly stated.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The June 15, 2017, reference 02, 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/scn