

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANELL J SILA**  
Claimant

**APPEAL NO. 08A-UI-05522-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 05/11/08 R: 01**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Janell Sila, filed an appeal from a decision dated June 6, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 30, 2008. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Club Manager Chad Bennett and Fresh Assistant Manager Jason Anglen

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Janell Sila was employed by Wal-Mart from November 15, 2003 until May 9, 2008, as a part-time café associate. During the course of her employment she had received progressive disciplinary action for various problems with her work performance. Her attendance was the subject of a warning on October 4, 2004, and she was verbally counseled about it when other warnings were given for other problems. Her last warning was on February 27, 2008, at which time Fresh Assistant Manager Jason Anglen notified her verbally her attendance was becoming a problem again. She was frequently tardy due to transportation problems or “reading the wrong schedule.”

The employer’s discharge policy does not require a certain number of warnings for a specific problem, but any combination of warnings for various issues can lead to discharge. Mr. Anglen did tell Ms. Sila, and the warning stated on its face, that further violations of any policy could lead to discharge. On May 9, 2008, the claimant was late to work because she had to drop her son off at his job first and he was not ready. Later that day she was discharged for another policy 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.

The claimant had been advised her job was in jeopardy as a result of her various policy violations. The final warning stated the next level of discipline would be discharge for violation of any of the company policies. The final incident was an unexcused tardy due to transportation problems. Matters of purely personal consideration, such as transportation, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant is disqualified.

**DECISION:**

The representative's decision of June 6, 2008, reference 01, is affirmed. Janell Sila is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css