

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER A BICKHAM**  
Claimant

**APPEAL NO. 07A-UI-10385-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 10/07/07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. (employer) appealed a representative's November 2, 2007 decision (reference 02) that concluded Jennifer A. Bickham (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2007. The claimant responded to the hearing notice, but was not available for the hearing. Colin Kirby, the assistant manager when the claimant's employment ended, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Seven were offered and admitted as evidence.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section. The claimant made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for employer on December 4, 2004. The claimant worked as a full-time cashier.

During her employment, the employer gave the claimant warnings about her attendance. (Employer Exhibit Five). On or about September 10, 2007, the employer gave the claimant her final written warning or decision day for continuing attendance problems. (Employer Exhibit Four). At this point, the claimant had 18 absences in six months. The September 10 warning was the claimant's last chance to improve. The employer sent the claimant home that day and expected her to return to work the next day with a plan of action to improve her attendance. Instead, the claimant submitted paperwork for a medical leave of absence. The claimant's leave of absence was authorized until October 3. The paperwork from the claimant's doctor indicated she could return to work on October 3, 2007.

The claimant did not call or report to work on October 3. On October 7, the claimant called the employer to report she was unable to work. The employer told the claimant she needed to come in and talk to the employer about her continued employment because she had not reported to work on October 3 and had not turned in paperwork to extend her leave of absence. On October 7, the employer made the decision to discharge the claimant because of continuing unexcused absenteeism. The claimant did not provide the employer with any documentation indicating she was still ill and unable to work any time after October 3.

The claimant established a claim for unemployment insurance benefits during the week of October 7, 2007. She filed claims for the weeks ending October 13 through November 17, 2007. The claimant received a total of \$1,035.00 in benefits for these weeks.

The claimant called the Appeals Section at 11:26 a.m. for her 11:00 a.m. hearing. The claimant had not been able to take the 11:00 a.m. phone call because she had been unexpectedly called to work at 10:15 a.m. that day. The claimant did not contact the Appeals Section when her new employer called her to work because she assumed her supervisor would give her permission to participate in the phone hearing after she got to work. The claimant's supervisor was busy with a business situation so the claimant was not able to get her permission to talk on the phone at 11:00 a.m. The first time the claimant was available to use her phone was 11:26 a.m. The claimant made a request to reopen the hearing.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

When the claimant agreed to report to work at the last minute, she could have told the employer she had an appointment at 11:00 a.m. and asked permission to use her phone at work at that time. The claimant did not do this. Instead, she incorrectly assumed her supervisor would grant her permission to use her phone at work after she arrived. Since the claimant could have made arrangements to use her phone before she went to work or could have called the Appeals Section to request a continuance, the claimant's request to reopen the hearing is not granted. The claimant did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7)

The claimant understood the procedure to get a leave of absence so absences would be excused instead of unexcused. The claimant knew her job was in jeopardy when she received her final written warning or decision day for excessive absenteeism in mid-September. Instead of providing the employer with her plan of action to improve her attendance, the claimant requested and was granted a leave of absence until October 3, 2007. The leave of absence indicated the claimant would return to work on October 3. When the claimant did not return to work on October 3, did not submit the necessary paperwork to extend or her leave of absence, did not provide the employer with a plan to improve her attendance and then called the employer to report that she was unable to work on October 7, the employer discharged her for excessive absenteeism. Under the facts of this case, the employer established that the claimant committed work-connected misconduct. As of October 7, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 13 through November 17, 2007. The claimant has been overpaid \$1,035.00 in benefits she received for these weeks.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's November 2, 2007 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 7, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$1,035.00 in benefits she received for the weeks ending October 13 through November 17, 2007.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css