

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01779-CT
OC: 01/11/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

ANNE K FORD
606 W BOONE ST #3
MARSHALLTOWN IA 50158

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

WAL-MART STORES INC
C/O TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Anne Ford filed an appeal from a representative's decision dated February 9, 2004, reference 02, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on March 10, 2004. Ms. Ford participated personally. The employer participated by Roger Lamp, Co-Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Ford was employed by Wal-Mart from April 8, 2003 until

January 8, 2004 as a full-time overnight stocker. She was discharged because of her attendance.

Ms. Ford received a verbal warning about her attendance on October 28. Her absences to that point had all been due to illness. She was over 2 hours late on November 1; 32 minutes late on November 8; and 16 minutes late on November 28. She was absent without calling in on December 8, 9, and 10. She advised the employer that the three absences were due to personal problems. On December 19, Ms. Ford was advised that her attendance was jeopardizing her continued employment. She was given a "decision-making" day to decide if she wanted to continue the employment and, if so, what changes she planned to make to retain her job.

Ms. Ford was over 1 hour late on December 20 and again on December 26. She was 12 minutes late on December 27. The decision to discharge was based on the fact that she did not timely report her absence of January 1. She was to report to work at 10:00 p.m. on that date but did not report her absence until approximately 5:00 a.m. on January 2. Absences are to be reported at least 1 hour prior to the start of the shift. Ms. Ford was discharged on the next available opportunity, January 8, 2004. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ford was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting to work is considered a limited absence from work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Ms. Ford received a verbal warning regarding her attendance on October 28. Almost immediately following the warning, she was over 2 hours late on November 1. She had 2 additional incidents of tardiness and 3 unreported absences before she received her next warning on December 19. When she was given the "decision-making" day on December 19, Ms. Ford was clearly on notice that she was in danger of losing her job. In spite of the warning, she was over an hour late the next day. She then accumulated 2 additional incidents of tardiness on December 26 and 27. None of the tardiness identified herein is excused as the evidence does not establish any reasonable cause for it. Ms. Ford's final absence of January 1 is unexcused as it was not timely reported.

Ms. Ford had ample notice that her attendance was jeopardizing her continued employment with Wal-Mart. In spite of the warnings, she did not take those steps necessary to ensure her timely arrival at work. The absences identified herein are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated February 9, 2004, reference 02, is hereby affirmed. Ms. Ford was discharged by Wal-Mart for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b