

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH P KACZINSKI
Claimant

APPEAL NO. 11A-UI-11502-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/17/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 17, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 26, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Arch Allison participated in the hearing on behalf of the employer with a witness, Bill Hackbarth.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a sales associate from August 3, 2010, to July 16, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant had received a verbal warning on June 20 for excessive absenteeism after absences on February 11, May 21, February 11, and June 19.

On July 14, the claimant was given a decision-making day, which is the final step in the disciplinary policy, after he was absent without proper notice on July 10 and 11. He was informed that his job was in jeopardy due to his absenteeism.

The claimant left work early due to illness on July 16 with notice to his supervisor. When he left, his supervisor asked him if he was aware of the attendance policy but did not tell him that he was discharged for leaving work.

The claimant was absent without notice on July 17 and 18 because he believed that he was going to be discharged.

The claimant filed for and received a total of \$1,485.00 in unemployment insurance benefits for the weeks between July 17 and October 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 claimant was warned about his absences and failure to properly notify the employer about his absences. He continued to miss work without notice on July 17 and 18. Even though the claimant had a legitimate reason for missing work on these days, his failure to call in made the absences unexcused. Work-connected misconduct has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 17, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs