

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DEBRA A MCBRIDE
Claimant

APPEAL NO: 18A-UI-05587-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 04/15/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 10, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 5, 2018. The claimant participated in the hearing. Margaret Nielson, Personnel Coordinator, 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 overnight cashier for Walmart, Inc. from October 16, 2012 to April 17, 2018. She was discharged for exceeding the allowed number of attendance points.

The employer's attendance policy is a no-fault policy. Employees are assessed one point for each full day absence and one-half point for any absence of 10 minutes to two hours. The employer does not issue attendance warnings to employees but instead expects employees to keep track of their points on the computer, although it can take over one week for a point to show up on the system.

The claimant has a bad knee and needs a knee replacement. She was absent due to problems with her knee and not being able to stand on it during her shift November 18, 2017; November 22, 2017; December 1, 2017; December 12, 2017; December 20, 2017; March 6, 2018; March 21, 2018; and April 3, 2018, for a total of eight points. The employer sent the claimant a time clock message April 3, 2018, stating she had eight points. The claimant did not inquire about intermittent FMLA.

On April 11, 2018, the claimant's daughter and granddaughter had a physical altercation and the claimant called the employer to state she needed to stay home and care for her other grandchildren. When the claimant returned to work April 12, 2018, she checked her points and it was still showing seven as the April 3, 2018, absence had not shown up yet. The claimant

talked to Assistant Manager for the overnight shift Becki Whitaker and after the claimant explained the circumstances of her April 11, 2018 absence, Ms. Whitaker said the employer would let that one absence go but it was the only time that would happen. On April 17, 2018, however, the employer terminated the claimant's employment for exceeding the allowed number of attendance points.

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.

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 claimant's final absence would not be considered an excused absence, her other eight absences during the previous six months were due to a medical condition and are considered excused. Although it would have been advisable for the claimant to seek intermittent FMLA, even without having done so, her absences are still not considered unexcused absences. Under these circumstances, the administrative law judge finds one unexcused absence does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 10, 2018, reference 01, decision is reversed. 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