IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

LUCINDA K DIRKS
Claimant

APPEAL NO: 14A-UI-12346-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 10/26/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 26, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 18, 2014. The claimant participated in the hearing. Jason Nichol, Co-Manager, 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 part-time overnight fresh associate stocker for Wal-Mart from July 23, 2013 to January 14, 2014. She was discharged from employment due to a final incident of absenteeism that occurred on January 12, 2014.

The employer's no-fault attendance policy states that if an employee accumulates three absences within a rolling six-month period she will receive a personal discussion; if an employee accumulates four absences within a rolling six-month period she will receive a first written coaching; after an employee accumulates five absences within a rolling six-month period she will receive a second written coaching; after an employee accumulates six absences within a rolling six-month period she will receive a third written coaching; and after an employee accumulates seven absences within a rolling six-month period her employment will be terminated.

The claimant was absent August 26, September 1, September 22, October 18 and 20, November 18, November 24, December 15, 2013, and January 12, 2014. Because her absences October 18 and 20, 2013 covered back to back shifts she was assessed one point for that absence and her absence November 24, 2013 was a no-call/no-show. The claimant also left early, before completing one-half of her shift, on five other occasions.

The employer issued the claimant a first written coaching November 7, 2013; her second written warning December 2, 2013 after accumulating seven absences; her third written warning December 31, 2013 after accumulating eight absences; and her employment was terminated January 14, 2014 after accumulating nine absences.

The claimant's verbally abusive husband of 31 years kicked her out of her home and she had to move to a new town and find a job. She was suffering from major depressive disorder and trying different medications which affected the way she performed her job and her attendance. She was also diagnosed with Type 2 diabetes and suffered severe anxiety attacks inside and outside of work. The claimant explained to the employer she was experiencing medical issues when the employer issued her the above-stated warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code § 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.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The claimant accumulated nine absences and five instances of leaving before working half of her shift on five other occasions. Fourteen incidents of absenteeism in approximately four months, between August 26 and January 12, 2014, is excessive. The claimant was suffering from several medical conditions that affected her attendance, among other issues, but there is no evidence she provided doctor's notes covering her absences. While the administrative law judge is sympathetic to the claimant's situation – between the abusive husband, having to move and start a new life with a new job, while suffering from depression, anxiety attacks, and Type 2 diabetes; the employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The November 26, 2014, reference 02, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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