

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANALEE J WILLIAMS

Claimant

APPEAL NO: 14A-UI-12350-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 11/09/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 25, 2014, 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 December 18, 2014. The claimant participated in the hearing. Kacy Suit, Assistant 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 cashier for Wal-Mart from June 29, 2013 to November 10, 2014. She was discharged for absenteeism.

The employer's attendance/no-fault policy states an employee will receive a first written warning upon accumulating three absences within a rolling six-month period; a second written warning upon accumulating four absences within a rolling six-month period; a third written warning upon accumulating five absences within a rolling six-month period; and faces termination from employment upon accumulating six absences within a rolling six-month period.

The claimant received a first written warning November 2, 2013 following an absence October 20, 2013; a second written warning December 31, 2013 for accumulating 12 absences; a third written warning August 19, 2014 for accumulating nine absences after some of her absences dropped off; and she had three absences between December 31, 2013 and August 19, 2014. She was placed on an action plan at that time. The employer terminated the claimant's employment November 10, 2014 because of absences September 15, September 26, and October 27, 2014.

The employer does not know the dates or reasons for the majority of the claimant's absences. The claimant stated she was absent September 15, 2014, due to a court date; she does not recall the reason for her absence on September 26, 2014; and was absent due to a child with ADHD who was out of control resulting in the claimant having to stay home to deal with his issues October 27, 2014.

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 § 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant apparently violated the employer's attendance policy, the employer could not provide dates of any of the claimant's absences with the exception of four of those absences which occurred October 20, 2013 and September 15, September 26, and October 27, 2014. She had three absences between December 31, 2013 and October 27, 2014. Three absences in a ten-month period is not excessive absenteeism. Additionally, the claimant's last absence was October 27, 2014 but the employer waited until November 10, 2014 to terminate her employment. Two weeks between the last absence and the discharge date removes this from a current act of misconduct. Consequently, the administrative law judge concludes the claimant's absenteeism was not excessive and her last absence was not a current act of misconduct. Therefore, benefits are allowed.

DECISION:

The November 25, 2014, 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/can