

**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**

**JILL M RICO  
629 W LINCOLN WAY  
MARSHALLTOWN IA 50158-2627**

**WAL-MART STORES INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-06175-LT  
OC: 05-21-06 R: 02  
Claimant: Appellant (4)**

**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.

**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.

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the June 12, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 5, 2006. Claimant participated. Employer participated through Nino Reyes and Polly Dudley. Employer's Exhibit 1 was received.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time overnight stocker through March 30, 2006 when she was discharged. She picked up a leave of absence packet on March 9, 2006 and Shriner's Hospital in Minnesota faxed the completed information to employer for a leave of absence under Family

Medical Leave Act (FMLA) from March 10 through April 10, 2006 due to complications of her daughter's multiple sclerosis. Angie at Wal-Mart confirmed receipt of the packet faxed from the hospital. Angie did not participate in the hearing.

She attempted to communicate with the FMLA contact person at Shriner's Hospital about extending the leave from April 10, but was unable to communicate with her about where to fax the documents for completion. Claimant called day assistant manager, Jessica Grim, two or three times, who told her to get the information in by April 25 or she would be fired. Grim did not tell her to speak to personnel and claimant was not aware she could get an extension of the 15-day deadline and one was not offered. Grim did not participate in the hearing. Employer did not tell her she was already fired as of March 30 and claimant was not aware her employment had been terminated until April 25 when she called employer. There is no written procedure or policy about requesting an extension of time to submit FMLA requests, but employer does allow them.

Claimant's daughter was released to her regular activities on Wednesday, June 21 and claimant could have returned to work on that date for the majority of the workweek ending June 24, 2006.

#### 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.

871 IAC 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 or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Employer's evidence is troubling since there were inconsistent statements about separate personnel and medical files for claimant and employer agents (Grim in particular) failed to discuss the possibility of an extension of time with claimant. Claimant made a good faith attempt to submit the FMLA

paperwork to employer on time, but was unable to do so because of difficulty in communicating with the hospital contact. She also maintained reasonable communication with employer about that difficulty but was not given an opportunity to request an extension of time for submission. Employer's denial, given the circumstances, was unreasonable. Claimant's failure to timely submit the application for extension of the FMLA period was not misconduct. Thus, no disqualification is imposed.

The administrative law judge concludes claimant is able to work and available for work effective June 18, 2006.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Since claimant was unable to work until June 21, 2006 while caring for her daughter, she is not entitled to benefits until then. Since she was available for the majority of the workweek ending June 24, 2006, benefits are allowed effective June 18, 2006.

#### DECISION:

The June 12, 2006, reference 01, decision is modified in favor of the appellant. The claimant was discharged from employment for no disqualifying reason. Claimant was available for work and benefits are allowed effective June 18, 2006, provided claimant is otherwise eligible.

dml/cs