

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY L HORSTMAN
Claimant

APPEAL NO. 13A-UI-01139-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/09/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Cody Horstman, filed an appeal from a decision dated January 28, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 25, 2013. The claimant participated on his own behalf and with Lee Horstman. The employer, Wal-Mart, participated by Manager Dan Cosner.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cody Horstman was employed by Wal-Mart from March 6, 2012 until December 28, 2012 as a full-time overnight associate. He requested a leave of absence for medical reasons and received the necessary paperwork from the human resources department on December 6, 2012. He was told at that time he needed to have his doctor submit the finished paperwork within 15 days or he would be discharged. By December 28, 2012, the paperwork had not been submitted and therefore all the scheduled shifts he missed from December 6 through 27, 2012, were unexcused. He was notified of the discharge by Manager Paul Curl over the phone.

Store Manager Dan Cosner had called and spoken with Mr. Horstman on December 22, 2012, and asked him to meet with him the next day at 8:00 a.m. to discuss the fact the documentation had not been returned, and also get his statement on a complaint he had filed against a co-worker. Mr. Horstman agreed but never showed up. By the time the claimant called on December 28, 2012, to say he was ready to come back to work, he had been discharged for absenteeism.

Mr. Horstman made much of the fact he had filed a sexual harassment complaint against a co-worker about the time he asked for the leave of absence. When his supervisor had not addressed his concerns he went to Store Manager Dan Cosner under the employer's "open door policy." Mr. Cosner immediately e-mailed Terry, the claimant's supervisor, and told her not

to schedule Mr. Horstman to work with the employee about whom he had complained. He also told the claimant the matter would be investigated but it would take some time.

The claimant maintained he had been discharged because the personnel manager, Mindy Coates, was friends with Terry, who was friends with the person against whom the complaint had been made. But Ms. Coates does not have the authority to discharge anyone, only the store director may give final authority for that. Mr. Cosner denied any reason for the discharge except the unexcused absenteeism.

Mr. Horstman also maintained he had received the leave of absence paperwork from Ms. Coates on Sunday, December 16, 2012, not Thursday, December 6, 2012, and so the 15-day period would have ended December 31, 2012. But a review of the time records by Mr. Cosner verified Ms. Coates was not working on December 16, 2012.

The claimant further argued that his doctor had submitted the necessary paperwork to Wal-Mart on December 19, 2012. The employer did receive a fax from the doctor on December 20, 2012, but it was not the required leave of absence documentation, merely a statement indicating the claimant was a patient of the doctor's and the employer could contact the medical office with any further questions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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.

The claimant was discharged for unexcused absenteeism. The employer was willing to consider his request for leave of absence but the necessary medical verification was required first. Mr. Horstman never submitted the paperwork as required. He even declined to meet with the store manager to discuss his complaint and also his failure to provide the necessary medical documentation. That meant the absences for his scheduled shifts between December 6 and 27, 2012, were unexcused.

Mr. Horstman had many misconceptions about the situation, none of which the administrative law judge considers valid. He was discharged for unexcused absences, not because the personnel manager or his supervisor were angry about the complaint or him exercising his right to use the open door policy. He did not submit the necessary documentation and whatever it was the doctor faxed to the employer, it was not the required report.

The employer was willing to investigate his complaint and to work with him about the doctor's report, but he declined to take advantage of the offer of help and did not appear for the meeting.

The record establishes the claimant was discharged for excessive, unexcused absenteeism. This is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of January 28, 2013, reference 01, is affirmed. Cody Horstman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs