

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN BRUCE

Claimant

APPEAL NO: 16A-UI-06515-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 05/08/16

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 1, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 27, 2016. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jeremiah Swanson and Lori Meskimen, Assistant Managers, 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 sales floor associate for Wal-Mart from April 26, 2015 to May 10, 2016. He was discharged from employment due to a final incident of absenteeism that occurred on May 6, 2016.

The employer changed its attendance policy and wiped all employees' attendance records clean effective March 5, 2016. The claimant received a copy of the new policy and signed for it indicating he read and understood the policy February 23, 2016. Under the new policy, which is also a no-fault policy, employees are discharged upon reaching nine attendance occurrences within a six-month rolling period of time. Occurrences drop off after six months. The employer no longer gives employees documented verbal or written warnings and places the responsibility of knowing the occurrence total on the employee.

The claimant properly reported his absences due to the illness of himself or his child(ren) March 13, April 3, April 22, May 3, and May 6, 2016, and was assessed one occurrence for each absence. He left more than two hours early March 22, April 17, and May 2, 2016 because he was not feeling well and received one occurrence for each of those events. He was more than ten minutes tardy April 8, 2016 and received one-half occurrence, and left less than two hours early April 30, 2016 and received one-half an occurrence. The claimant's absences through May 6, 2016, were due to the properly reported illness of the claimant or his child(ren).

The employer planned to terminate the claimant's employment May 7, 2016 but he was a no-call no-show that day as well as May 8 and 9, 2016. The employer believes he knew he exceeded the allowed number of attendance occurrences May 6, 2016, and that is why he did not call or show up for work May 7, 8, and 9, 2016.

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(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 employer's policy may count absences due to illness or accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant accumulated nine occurrences between March 13 and May 6, 2016. All but one-half occurrence of his nine occurrences were due to the properly reported illness of himself or his child(ren). Consequently, those absences, with the exception of the one incident of tardiness, are considered excused under Iowa law.

The claimant had three consecutive no-call no-show absences May 7, 8, and 9, 2016. The employer believes those absences occurred because the claimant knew he exceeded the allowed number of attendance occurrences and was facing termination of his employment. Regardless, the employer planned to discharge the claimant May 7, 2016, for violating its attendance policy, rendering the claimant's three no-call/no-show absences irrelevant as the employer had already made the decision to terminate the claimant's employment prior to his no-call/no-show absences.

Because the final absence, on May 6, 2016, was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The June 1, 2016, reference 01, decision is affirmed. 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

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