

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHASITY WHITMER
Claimant

APPEAL NO. 07A-UI-01511-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01-07-07 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 30, 2007, 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 February 27, 2007. The claimant participated in the hearing with Attorney Michael Hinds. Eric Long, Overnight 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 full-time overnight stocker for Wal-Mart from May 3, 2006 to January 4, 2007. She was discharged for excessive unexcused absenteeism after a hand injury suffered in a work-related accident in the fall of 2006. The claimant also has a seven-year-old son who has seizures and chronic bronchitis. The claimant had 14 approved absences or tardies between November 4, 2006 and December 28, 2006, and 23 unapproved absences or tardies between June 3, 2006 and January 4, 2007. The claimant testified that she was usually absent or had to leave early because her hand was bothering her or her child was ill. On December 28, 2006, her hand hurt so badly the claimant became “hysterical” and was sent home. On January 3, 2007, she was tardy because her son was ill and because it was her fourth incident of tardiness it counted as an absence under the employer’s policy. The claimant received a verbal warning for absenteeism September 12, 2006 and a written warning for her attendance October 20, 2006. She had a decision making day October 27, 2006, and was aware her job was in jeopardy.

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 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(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 claimant's absences were due to her hand injury or her child's illnesses and as such do not rise to the level of disqualifying job misconduct as defined by Iowa law. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Benefits are allowed.

DECISION:

The January 30, 2007, 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

je/css