

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DESIREE BRICKLES**  
Claimant

**APPEAL NO. 08A-UI-01064-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01-06-08 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 24, 2008, 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 14, 2008. The claimant participated in the hearing. Scott Alexander, Co-Manager, and Debbie Piercy, Personnel 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 customer service manager for Wal-Mart from August 31, 2004 to January 7, 2008. She was discharged for violating the employer's attendance policy. The policy states that three unauthorized absences will result in a coaching or verbal warning; four unauthorized absences will result in a coaching session; five will result in a written warning; six would result in a decision making day; and seven would result in termination. Three incidents of tardiness result in on attendance point. The employer did not have the dates of the incidents of tardiness but listed July 12, 2007; July 14, 2007; August 3, 2007; August 4, 2007; August 19, 2007; September 8, 2007; September 9, 2007; September 20, 2007; September 21, 2007; September 22, 2007; September 25, 2007; September 27, 2007; October 8, 2007; October 9, 2007; October 11, 2007; November 11, 2007; November 12, 2007; November 13, 2007; November 14; 2007; December 9, 2007; December 12, 2007; December 13, 2007; December 15, 2007; December 23, 2007; December 24, 2007, December 27, 2007; December 31, 2007; she was a no-call no-show January 1 and 2, 2007; and the employer terminated her employment January 7, 2008. She received a verbal coaching July 7, 2007, after accumulating eleven attendance occurrences; a written coaching December 20, 2007, after accumulating 24 attendance occurrences, and a decision-making day December 24, 2007, after accumulating 26 attendance occurrences. The claimant testified that some of her absences in July, August, and September 2007 were because she was experiencing personal alcohol problems and was getting counseling and attending Alcoholics Anonymous. She also

testified she was off November 11 through November 14, 2007, because she was on a personal leave of absence working for the Red Cross. She further testified she left work to help the Red Cross with a fire in Waukee December 23, 2007, and was seen by her boss at the mall later that day. She admits she should have returned to work rather than go shopping after the fire. On December 31, 2007, and January 1 and January 2, 2008, the claimant testified she did call the employee hot line, stating she would not be in because of illness as she had sprained her ankle and was on crutches, but the employer did not have a record of her calls January 1 and 2, 2008.

### **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). While the claimant had several absences and exceeded the allowed number of attendance occurrences, her last absence was due to a sprained ankle and she was on crutches. Although she contends she did call the hotline to report her absences, the employer did not have a record of those calls, and consequently there is not enough evidence to make a finding on that matter with any certitude. If the employer had terminated her employment following an unexcused absence (one not due to properly reported illness or excused for some other approved reason), the separation for misconduct would most likely stand. In this case, however, the administrative law judge must conclude that because the final absence was related to properly reported illness. No final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The January 24, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw