

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHAWNE D COMBS**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 16A-UI-10465-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/28/16**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on October 10, 2016. The claimant, Shawne D. Combs, participated. The employer, Wal-Mart Stores, Inc., participated through Zondra Wilburn, assistant manager. Claimant's Exhibits A, B, and C were received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a fitting room employee, from March 14, 2013, until August 19, 2016, when she was discharged due to absenteeism. Claimant's final absence occurred on August 15, 2016. Claimant had a flat tire that day, and she was late to work. The employer issued claimant a half-point for this absence, which took claimant to nine total points. Claimant knew how many attendance points she had at this moment, and she was aware she could lose her job for arriving late on August 15.

On June 24, claimant's niece was transported from the employer's store to the hospital via ambulance. Claimant received permission from her employer to go in the ambulance with her niece, and she believed this early departure from work would be excused. However, the employer issued claimant a half-point for leaving early that day. Claimant was absent June 13, 14, 15, and 16, all due to personal illness. Claimant was absent on May 22 and 23, due to personal illness. Claimant was absent on May 19 and 21 due to car problems. Under the employer's attendance policy, all absences are treated the same regardless of the underlying cause. The only exception to this is a situation in which an employee applies for and is granted a leave of absence from a third-party claim administrator, Sedgwick, which would excuse any

absences covered under the leave of absence. Claimant testified that she believed her absences due to illness in May and June were covered under an approved leave of absence. However, she later learned that there was a conflict with a previously-approved leave of absence, and therefore her absences in May and June were not excused. (Exhibits A and B)

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "[2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989).

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins* at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper* at 10. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer’s no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

Here, claimant had three absences due to issues with transportation. She was absent two days due to car problems, and she was late one day because of a flat tire. All of her other absences were due to either personal illness or emergency circumstances. Because the bulk of claimant’s absences were otherwise related to properly reported illness or other reasonable grounds, claimant’s absences cannot be considered excessive and unexcused. The employer has not met its burden of proving work-connected misconduct and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The September 16, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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