

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE RUTH
Claimant

APPEAL NO. 10A-UI-01053-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/29/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Leslie Ruth filed an appeal from a representative's decision dated January 19, 2010, reference 01, which denied benefits based on her separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on March 2, 2010. Ms. Ruth participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Ruth was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ruth was employed by Wal-Mart from October 10, 2004 until December 3, 2009. She worked full time as a cashier. She was discharged because of her attendance. The final event was a three-day absence caused by an allergic reaction. The employer was called each day of the absence.

Ms. Ruth received warnings about her attendance over the course of her employment. The last disciplinary action prior to discharge was a "decision-making" day in late October of 2009. She had not been late to work since the disciplinary action. The only absences since the discipline were the three days she missed due to illness immediately before her discharge. Her supervisor told her she had shown improvement in her attendance. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to

be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

To support a disqualification from job insurance benefits, there must be a current act of unexcused absenteeism. See 871 IAC 24.32(8). In the case at hand, the final absences that triggered Ms. Ruth's discharge were due to illness and were properly reported. Therefore, they are excused absences and not acts of misconduct. Since she did not have any other attendance infractions after the "decision-making" day in late October, it must be concluded that there was no current unexcused absence in relation to the discharge date in December. Inasmuch as the employer has failed to establish a current act of misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated January 19, 2010, reference 01, is hereby reversed. Ms. Ruth was discharged by Wal-Mart but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css