

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DREW A HAYES
Claimant

WALMART INC
Employer

APPEAL 19A-UI-07108-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/09/19
Claimant: Appellant (1R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Drew A. Hayes, appealed the initial decision dated August 28, 2019 (reference 05) which denied benefits. After proper notice, a telephone hearing was conducted on October 1, 2019. The hearing was held jointly with Appeal 19A-UI-07109-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct or did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment as a full-time shipping and receiving clerk on May 14, 2019. He last performed work on May 30, 2019 when he left early due to personal mental health issues. Before leaving, he notified human resources, who agreed to alert his manager. The claimant stated he had discontinued taking his anxiety medication which interfered with his ability to do his job.

The claimant called the employer to report his absences in accordance with its policy for his shifts on May 31, June 4, and 5, 2019. He stopped reporting his absences. His last voicemail to the employer stated he would contact the employer after he received medical treatment. The claimant did not obtain medical treatment until the end of June and had not been advised to be off work by a treating physician. The employer did not agree to a leave of absence with the claimant. At the fact-finding interview, the employer reported the claimant was discharged after

repeated no-call/no-shows. The claimant acknowledged he stopped reporting his absences after June 6, 2019. The employer indicated the separation date to be June 14, 2019.

The claimant recently began new part-time employment with Hy-Vee stores as a delivery driver.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In the specific context of absenteeism the administrative code provides:

Iowa Admin. Code r. 871-24.32(7):

(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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. In this case, the claimant properly reported three absences on May 31, June 4 and June 5, 2019 due to personal illness. He then discontinued notifying the employer of his absences and did not return to work. Because he did not properly report his absences, even though they were due to illness, they cannot be considered excused for purposes for unemployment insurance eligibility. Further, the claimant was not granted permission to be absent by way of a leave of absence.

The claimant failed to maintain reasonable contact with the employer while he was absent from work beginning May 31, 2019 until his separation on June 14, 2019. The question of whether

the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The claimant's last message to the employer was June 5, 2019 and stated he would contact the employer after medical treatment (which he did not seek for several more weeks). As a two-week employee, the employer would not reasonably be expected to hold the claimant's position open indefinitely, nor did the claimant's condition prevent him from being able to make contact with the employer or human resources about his absences. The administrative law judge is sympathetic to the claimant but he has failed to establish a good cause reason to excuse his non-communication with the employer for a period of nine days before discharge. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

In the alternative, if this separation was categorized as a voluntary quit, the claimant would remain disqualified from benefits.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(20) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Here, the claimant discontinued working and discontinued contact with the employer while he tended to personal matters. While his reasons would be considered compelling personal reasons to quit the employment, they would not be good cause attributable to the employer according to Iowa law. Accordingly, whether a voluntary quit or discharge, the claimant's separation from employment is disqualifying. Benefits are denied.

REMAND: The issue of whether the claimant is able to and available for work (due to personal illness and part-time employment at Hy-Vee) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The August 28, 2019, (reference 05) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. **REMAND:** The issue of whether the claimant is able to and available for work (due to personal illness and part-time employment at Hy-Vee) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
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Decision Dated and Mailed

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