

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY K WAY
Claimant

APPEAL NO. 10A-UI-05252-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 03/07/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 30, 2010, reference 01, which denied benefits based upon her separation from Wal-Mart Stores, Inc. After due notice was issued, a telephone hearing was held on May 18, 2010. The claimant participated personally. The employer participated by Amber Abernathy, assistant manager, and Casey Oberrueter, assistant manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cindy Way was employed by Wal-Mart Stores from November 7, 2005, until March 7, 2010, when she was discharged from employment. The claimant was most recently employed as a full-time deli associate and was paid by the hour. Her immediate supervisor was Casey Oberrueter.

The claimant was discharged when she exceeded the permissible number of attendance infractions allowed under Wal-Mart policies. Ms. Way was aware of the company's attendance policy and had been warned prior to her termination. Ms. Way had been given a final written warning about attendance and had been given a one-day decision day on September 16, 2009, because of excessive absenteeism.

Ms. Way was discharged after she failed to report for work on March 4, and March 5, 2010, because of a medical condition of a grown stepson in another state. The claimant was not a primary caregiver to her stepson. The claimant did not travel to the state of Florida but instead was to remain home to receive telephone calls about her stepson's condition. The employer was willing to allow the claimant to receive calls at work. Based upon the previous warnings that had been served upon the claimant and her most recent absence that the employer did not consider to be for a compelling family reason, Ms. Way was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "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.

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.

No aspect for the contract of employment is more basic than the right of an employer to expect employees to appear for work on the day and hour agreed upon. Recurrent failure to honor that obligation evinces a substantial disregard for the employer's interests and reasonable standards of behavior than an employer has a right to expect of its employees under the provisions of the Iowa Employment Security Law. Ms. Way was discharged after she failed to report for work on March 4, and March 5, 2010, after being warned that her employment was in jeopardy due to excessive absenteeism. Ms. Way chose to remain away from work due to the medical condition

of an adult stepson in another state. Ms. Way was not engaged in primary care of that individual and did not travel to the state of Florida. The employer was willing to allow the claimant to receive communications about her stepson's condition at her place of employment. The claimant chose, for personal reasons, not to report for scheduled work but to remain at home for two workdays so that she would be available to receive telephone calls.

While the claimant's decision to remain at home may have been a good decision from her personal viewpoint, reasonable alternatives were available to the claimant. Benefits are denied.

DECISION:

The representative's decision dated March 30, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw