

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LAURA M COLLINS**  
Claimant

**APPEAL NO. 17A-UI-13417-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/10/17**  
**Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a -- Discharge for Misconduct

**STATEMENT OF THE CASE:**

Laura Collins, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated December 28, 2017, reference 01, denying unemployment insurance benefits, finding the claimant was discharged on November 24, 2017, for excessive unexcused absences and tardies. After due notice was provided, an in-person hearing was held in Sioux City, Iowa on March 1, 2018. The claimant participated. The employer participated by Mr. Richard Altena, Front Assistant Manager. Claimant's Exhibits 1 through 6 and Employer's Exhibits A through F were admitted into the hearing record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Laura Collins was employed by Wal-Mart Stores, Inc. from March 23, 2010 until November 24, 2017, when she was discharged for exceeding the permissible number of attendance infractions allowed under the company's attendance policy. Ms. Collins was employed as a full-time cashier and was paid by the hour. Ms. Collins' immediate supervisors were the customer service managers and Mr. Altena.

Ms. Collins was discharged from Wal-Mart Stores, Inc. on November 24, 2017, after she had exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Under the terms of the policy, employees are subject to discharge if they accumulate nine attendance occurrences within a six-month rolling period. Under the company's policy, employees are assessed one occurrence for each absence and one-half occurrence for each tardiness or leaving early of less than two hours. Tardiness or leaving early in excess of the two-hour rule results in the full occurrence being assessed.

During the most recent months of her employment with Walmart Stores, Ms. Collins was suffering from a number of physical and psychological maladies. When possible, the claimant scheduled time off work in advance to attend doctor's visits and those absences were excused under policy. Due to her medical and psychological issues however, the claimant did not know in advance when those issues might cause her to be absent, late reporting for work, or require her to leave work early. When possible, the claimant provided notice to the company of her need to be absent, leave early, or arrive to work late. The claimant's medical and psychological issues had been verified by medical practitioners and the employer was aware of them. On one occasion, the claimant's supervisor had suggested to Ms. Collins that the assistance of a psychologist might be beneficial to her.

The claimant had attempted to the best of her ability to report to work on a regular basis, but was often prevented from doing so with maladies such as strep throat, leg cramps, as well as bipolar disorder and critical incident stress syndrome. Ms. Collins was not always able to provide advance notice of her need to report late or be absent, because of mental incapacity related to these disorders.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

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

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 disqualification shall continue 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(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.

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).

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.

Because the claimant was discharged from her employment, the employer has the burden of proof in this matter. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. Absences related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness or leaving early are forms of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The use of a point system by the employer is not dispositive of whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

In the case at hand, Ms. Collins has been medically determined to be suffering from a number of physical and psychological maladies including bi-polar disorder and critical incident stress syndrome. The evidence in the record establishes that the claimant's absences and other attendance infractions were caused by conditions that prevented Ms. Collins' ability to function at times and caused her to be absent from work or to report to work late.

The Supreme Court of the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that absences due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. The court has also held however, in the case of *Roberts v. IDJS*, 356 N.W.2d 218 (1984) that unreported absences due to medical incapacity are considered excused.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes the claimant was discharged under non-disqualifying conditions. Although the decision to terminate Ms. Collins may have been a sound decision from a management viewpoint, the evidence establishes that the majority of the claimant's attendance infractions and her failure to properly report the absences at times, was due to mental incapacity and illness. Accordingly, the claimant is held to be eligible for unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

The administrative law judge further concludes however, that based upon the number of the claimant's attendance infractions and the reasons for them, there may be an issue regarding the claimant's ability and availability for work. These issues may be subject to the inquiry for the Benefit Bureau of Iowa Workforce Development.

**DECISION:**

The representative's decision dated December 28, 2017, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law for each week that she claims unemployment insurance benefits.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs