

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN J SKELTON**  
Claimant

**APPEAL NO. 10A-UI-02094-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 01/10/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Dawn Skelton (claimant) appealed a representative's February 1, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Wal-Mart Stores (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 20, 2010. The claimant participated personally. The employer participated by Jared Eslick-Coats, Assistant Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 29, 2004, and at the end of her employment she was working as a full-time department manager. On December 18, 2009, employer issued the claimant a verbal warning for tardiness and absenteeism. On December 29, 2009, the employer issued the claimant a written warning for tardiness and absenteeism. The employer notified the claimant that further infractions could result in termination from employment. The claimant was tardy 24 times between April 13, 2009, and her last day of work January 13, 2010. On January 12, 2010, the claimant was tardy because she was having issues at home with her three and nine-year-old daughters. On January 13, 2010, the employer terminated the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The representative's February 1, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs