

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BONITA M SHINKLE
6549 VISTA DR #49108
WEST DES MOINES IA 50266

WAL-MART STORES INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08383-CT
OC: 07/10/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated August 1, 2005, reference 01, which held that no disqualification would be imposed regarding Bonita Shinkle's separation from employment. After due notice was issued, a hearing was held by telephone on August 31, 2005. The employer participated by Kelly Hilton, Personnel Manager, and Pat Danylchuk, Assistant Manager. Exhibits One through Nine were admitted on the employer's behalf. Ms. Shinkle did not respond to the notice of hearing. Documents she sent in were not received until after the hearing record was closed and, therefore, were not considered.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Shinkle began working for Wal-Mart on June 15, 1999 and last worked on June 30, 2005. At that time, she was a full-time cashier. Ms. Shinkle was discharged because of her attendance.

On June 26, 2004, Ms. Shinkle received a written warning about her attendance. At that point, she had 11 absences that were not approved. She accumulated an additional eight unapproved absences thereafter, resulting in a written warning and "decision-making" day on December 6, 2004. The absences were not due to illness but to the fact that Ms. Shinkle was feeling overwhelmed by problems at home and work. After the December warning, she was absent another 11 days through April 21, 2005 for the same reasons. The employer attempted to work with her and encouraged her to take a leave of absence, but she declined to do so. Ms. Shinkle was again absent on May 21 and June 1 for personal reasons related to problems at home. On July 1, she called to report that she would be absent for personal reasons. She was notified that she would be discharged if she did not report for work. Ms. Shinkle indicated she understood and would be in the following day to sign her termination papers. She came in on July 7 to complete an exit interview and to sign paperwork. Attendance was the sole reason for the discharge.

Ms. Shinkle has received a total of \$1,020.00 in job insurance benefits since filing her claim effective July 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Shinkle was separated from employment for any disqualifying reason. 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 receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

Ms. Shinkle had been notified through warnings that her attendance was unsatisfactory and was jeopardizing her continued employment with Wal-Mart. The most current warnings were in June and December of 2004. In spite of the warnings, Ms. Shinkle continued to accumulate unexcused absences. Although there were occasions on which she was absent due to illness, the 22 absences referred to herein were not due to illness. The evidence does not establish any other reasonable cause for the absences. Therefore, they were for personal reasons and, as such, are unexcused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Shinkle had eight unexcused absences after the June 26, 2004 warning before being warned again on December 6, 2004. She had an additional 13 unexcused absences after the December 6 warning and before calling in again on July 1 to report another absence.

The unexcused absences identified herein occurred over a period of approximately ten months. During calendar year 2005 alone, Ms. Shinkle had 14 unexcused absences. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a

substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, benefits are denied.

Ms. Shinkle has received job insurance benefits since filing her claim effective July 10, 2005. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 1, 2005, reference 01, is hereby reversed. Ms. Shinkle was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Shinkle has been overpaid \$1,020.00 in job insurance benefits.

cfc/kjw