

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA J HOBBS
Claimant

APPEAL NO: 10A-UI-09854-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/06/10
Claimant: Appellant (2)

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's July 1, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employers' account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on August 26, 2010. The claimant participated in the hearing. Bonnie Stalzer, a co-manager, and Kelly Feikert appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 14, 2000. The claimant worked as a full-time overnight cashier.

On April 21, 2010, the claimant received a written warning for attendance issues. The claimant exceeded the number of unapproved absences the employer considered acceptable. When the claimant received the April 21 warning, she understood her job was in jeopardy and she would be discharged if she had any more unapproved attendance issues, including reporting to work late before September 26, 2010. The claimant had unapproved absences on August 13, 2009, November 25, 2009, January 12, March 26 and April 17, 2010. The claimant was ill on January 12. She does not remember if she was ill or reported to work late the other days.

On June 5, the claimant's daughter planned to walk to a school dance with a friend. The claimant does not allow her 12-year-old daughter to walk more than five blocks at night. The claimant made a point of staying up so she could drive her daughter and her friend to the dance. The dance started at 8:00 p.m. The claimant did not know anyone who could have driven her daughter to the dance.

When the claimant got home around 8:15 p.m., she went to sleep. She set her alarm for 9:30 p.m. The claimant did not hear her alarm and overslept. When the claimant woke up at

midnight, she called the employer to report she had overslept. The claimant's daughter got a ride home with one of her friend's parents.

The employer discharged the claimant on June 5 because she had another unapproved absence after she had been warned her job was in jeopardy for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew her job was in jeopardy for attendance issues after she received the April 21 written warning. The facts do not establish that the claimant intentionally failed to work as scheduled. The claimant used poor judgment when she forced herself to stay up to drive her daughter to a school dance and did not do more to make sure she woke up in time to get to work. While the employer established justifiable business reasons for discharging the claimant, the facts do not establish that she committed work. As of June 6, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's July 1, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of June 6, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css