

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN L BENNETT
Claimant

APPEAL NO: 11A-UI-12385-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/28/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 16, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. After the hearing had closed, the Appeals Section received a letter from the employer's representative indicating the employer did not plan to participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in November 1999. She worked as a full-time cashier. The claimant understood the employer's attendance policy required employees to work as scheduled. Even when an employee provided a doctor's statement verifying an employee could not work, the employer considered the absence as an attendance incident.

The claimant has a chronic medical condition that her physician is treating her for. Standing at the cash register for an eight-hour shift aggravates the claimant's chronic condition. The claimant's symptoms included pain to the point she becomes very emotional. The employer does not allow cashiers to sit down while working.

In July 2011, the claimant received a written warning for excessive absenteeism. The claimant understood her job was in jeopardy if she missed another day of work. In mid-August or about a week before the employer discharged her, the claimant called the employer to report she was unable to work. The claimant did not go to work that day because she was in too much pain to work.

On August 26, the employer discharged the claimant for excessive absenteeism. The employer told the claimant that when she had her medical issues stable and under control, the employer wanted her to reapply and work for the employer.

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 § 96.5(2)a. 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 understood in July 2011 her job was in jeopardy and she could be discharged if she had one more absence. The employer knew the claimant had a chronic medical condition that made it very hard for her to work as a cashier because of the pain she experienced. Even though the employer understood the claimant was being treated for her medical issues, her doctor had not yet stabilized her medical issues. In mid-August 2011, the claimant was in a great deal of pain and notified the employer before her shift she was unable to work because of the pain she experienced.

The employer had justifiable business reasons for discharging the claimant. Even though the claimant understood her job was in jeopardy, she properly notified the employer in mid-August that she was unable to work. Since she was unable to work because of a medical condition, the claimant did not commit work-connected misconduct. As of August 28, 2011, the claimant is qualified to receive benefits based on the reasons for her employment separation.

DECISION:

The representative's September 16, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 28, 2011, 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/pjs