

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

CARISA E COX  
209 E WEBSTER ST  
MARSHALLTOWN IA 50158

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

Appeal Number: 04A-UI-10854-CT  
OC: 09/12/04 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, 4<sup>th</sup> 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 September 27, 2004, reference 01, which held that no disqualification would be imposed regarding Carisa Cox' separation from employment. After due notice was issued, a hearing was held by telephone on November 2, 2004. Ms. Cox participated personally. The employer participated by Angie Hanson, Assistant Manager. Exhibits One through Five were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Cox was employed by Wal-Mart from June 4, 1998 until September 4, 2004 as a part-time cashier. She worked approximately 20 hours each week, usually on weekends and after classes. She was discharged because of her attendance.

During the last six months of her employment, Ms. Cox was absent due to illness on eight occasions. During that same time frame, she was late reporting to work on 15 occasions. Ms. Cox takes medication at bedtime which makes her drowsy. Some of her tardiness was due to the effects of medication. However, Ms. Cox acknowledged that she would go out late at night to socialize with friends and, therefore, was not always able to get the sleep she needed. She was warned about her attendance on November 11, November 20, and November 30, 2003. Ms. Cox was absent without calling in on September 2 and 3. She had no legitimate reason for being absent. She just did not like her job anymore. Ms. Cox was notified of her discharge on September 4, 2004. Attendance was the sole reason for the discharge.

Ms. Cox has received a total of \$327.00 in job insurance benefits since filing her claim effective September 12, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Cox 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 job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting to work is considered a limited absence from work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Ms. Cox was late on 15 separate occasions during the last six months of her employment. The administrative law judge considers this excessive. Some of the tardiness was, no doubt, caused by medication. However, it appears that Ms. Cox had the ability to control some of the tardiness. It would seem less likely that she would be late for work if she did not spend late nights socializing with friends. The socializing interfered with her ability to get the sleep she needed in order to report for work timely. In addition to the repeated tardiness, Ms. Cox totally disregarded her employer's standards when she was absent for two consecutive days, September 2 and 3, without calling in simply because she did not like her job.

Ms. Cox had been warned that her attendance was jeopardizing her continued employment with Wal-Mart. In spite of the warnings, she did not take steps to conform her attendance to the employer's expectations. The attendance record identified herein is sufficient to establish excessive unexcused absenteeism within the meaning of the law. Accordingly, benefits are denied. Ms. Cox has received benefits since filing her claim. 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 September 27, 2004, reference 01, is hereby reversed. Ms. Cox 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. Cox has been overpaid \$327.00 in job insurance benefits.

cfc/tjc