

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TORI CONLEY**  
Claimant

**APPEAL NO: 10A-UI-00850-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART**  
Employer

**OC: 12-13-09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 6, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 16, 2010. The claimant participated in the hearing. The employer indicated it would not be participating in this hearing.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time people greeter for Wal-Mart from June 6, 2006 to October 26, 2009. She injured her ankle and was on crutches the week of October 12, 2009, and the employer placed her on medical leave and would not allow her to work. She was released to return to work October 20, 2009, but was abused by her live-in boyfriend October 19, 2009, and went back to her hometown of Muscatine because she was afraid of staying in the same town with her boyfriend and consequently called the employer and told it she would not be at work October 20, 2009. She called the employer October 21, 2009, and notified it her mom was in the hospital in Iowa City dying of liver cancer and she did not know when she would be back to work. The personnel department told her to use her sick leave and she called in every day she was gone. On October 26, 2009, the store manager called the claimant in Iowa City and told her she was no longer needed by the employer. The manager intimated she did not believe the claimant was in Iowa City with her mother but the claimant testified she was there and her mother passed away October 27, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant credibly testified that her last absence was due to the fact her mom was in the hospital in Iowa City dying of liver cancer and she was with her until her death October 27, 2009. She called the employer every day she was gone to report her absence and the employer chose not to participate in the hearing and present any contrary evidence or evidence of misconduct on the part of the claimant. Consequently, the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The January 6, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs