

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORETTA A COON

Claimant

APPEAL NO. 10A-UI-09575-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 2, 2010 decision (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. A telephone hearing was held on August 24, 2010. The claimant participated in the hearing. Kat Saycharuen, an assistant manager, 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 in September 2006. The claimant worked as a full-time cashier.

On April 2, 2010, the claimant received a decision day or her final written warning for attendance issues. The claimant understood that if she had any more unexcused absences, the employer could discharge her. The claimant notified the employer on April 15 that she was unable to work. The claimant took her sister-in-law to the hospital for a medical emergency. On April 23, the claimant was absent, but the employer approved this absence. The morning of May 18, the claimant received a call while sleeping that her mother had been hospitalized in Illinois. The claimant's husband was at work and she left him a note that she had to go to Illinois. The claimant asked her husband to call the employer. The claimant would have also called the employer, but she forgot her cell phone at home and did not know the number to call. The claimant's husband forgot to call the employer. When the claimant returned to work, she explained the situation to her supervisor. The claimant understood that her absence would not jeopardize her job. On May 26, the claimant understood she had approval to attend a school function.

On June 4, the claimant notified the employer that she was unable to work because her mother had a stroke and she had to go to Illinois, where her mother was hospitalized. The claimant was scheduled to work on June 7, but she did not return to Des Moines until June 8, 2010.

The claimant worked as scheduled on June 8 and 9. Although the employer recognized that most of the claimant's absences were for illnesses or injuries, the employer discharged her on June 9 for excessive, unexcused absenteeism. The claimant has chronic bronchitis.

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 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 employer established justifiable business reasons for discharging the claimant. The most recent absences occurred when the claimant learned her mother had serious medical issues and went to be with her mother in Illinois. Although the claimant did not notify the employer on May 18, she made reasonable arrangements to notify the employer. The claimant used poor judgment when she did not follow up to make sure the employer knew she would not be at work that day and the reason why. The most recent absence in early June occurred after the claimant learned her mother had a stroke and was again hospitalized. The claimant established reasonable grounds for not reporting to work on June 4 and 7. Based on the facts in this case, the claimant did not intentionally fail to work as scheduled. She did not commit work-connected misconduct. Therefore, as of June 6, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's July 2, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, commit a current act of 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/kjw