

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DERRICK WHITE**  
Claimant

**WALMART INC**  
Employer

**APPEAL 21A-UI-20315-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/25/21**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer, Wal-Mart Inc, filed an appeal from the September 3, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2021. The claimant did not participate. The employer participated through Human Resources Operations Manager Pam Lasswell. Official notice was taken of the agency records. No exhibits were received into the record. Exhibit 1, 2, 3, 4, and 5 were received into the record.

**ISSUES:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Whether the claimant was overpaid regular benefits? Whether the claimant is excused from repayment of benefits due to inadequate participation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as an assembler from March 18, 2019, and was separated from employment on July 24, 2021, when she was discharged. The claimant's immediate supervisor was Operations Manager Paul Anderson.

The employer has an attendance policy that is contained in its employee manual.

On January 24, 2021, the claimant left five hours early for his shift. The claimant did not provide an explanation for leaving early.

On February 15, 2021, the claimant left 2.29 hours early for his shift. The claimant did not provide an explanation for leaving early.

On February 22, 2021, the claimant left 4.45 hours early for his shift. The claimant did not provide an explanation for leaving early.

On March 6, 2021, the claimant left 42 minutes early for his shift. The claimant did not provide an explanation for leaving early.

On March 7, 2021 the claimant left six hours and 29 minutes early for his shift. The claimant did not provide an explanation for leaving early.

On March 21, 2021, the claimant was one hour and 56 minutes tardy for his shift. The claimant did not provide an explanation for being late that day.

On April 4, 2021, the claimant was six hours and 29 minutes tardy for his shift. The claimant did not provide an explanation for being late that day.

On June 14, 2021, the claimant left 35 minutes early for his shift. The claimant did not provide an explanation for leaving early that day.

On June 19, 2021, the claimant left 50 minutes early for his shift. The claimant did not provide an explanation for leaving early that day.

On June 27, 2021, the claimant left five hours and 59 minutes early for his shift. The claimant did not provide an explanation for leaving early that day.

On July 8, 2021, the claimant was 14 minutes tardy for his shift. He subsequently left his shift early by 22 minutes.

On July 29, 2021, Sarah Donnolly made the decision to terminate the claimant because she determined he had been excessively absent. Human Resources Operations Manager Pam Lasswell said the claimant likely worked two full weeks without being counseled regarding his attendance based on past experience. Ms. Lasswell cautioned that she was not part of the process and could only speak regarding the employer's practice rather than what happened in this specific case.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct. The overpayment issue is moot because the claimant is entitled to benefits.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct **except for illness or other reasonable grounds** for which the employee was absent and that were properly reported to the employer. Iowa Admin. Code r. 871-24.32(7) (emphasis added);

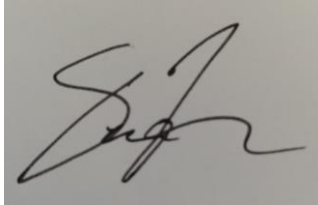
see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding “rule [2]4.32(7)...accurately states the law.” The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins* at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper* at 10.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer’s point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. In this case, the claimant is entitled to benefits because the final incident occurred on July 8, 2021, but the employer did not terminate him until July 29, 2021. The final incident is too remote from the claimant’s termination to be considered a final act to satisfy Iowa Admin. Code r.871-24.32(8).

**DECISION:**

The September 3, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. The overpayment issue is moot because the claimant is entitled to benefits. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

December 3, 2021  
Decision Dated and Mailed

smn/mh