

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

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WAL-MART STORES INC
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Appeal Number: 06A-UI-02058-DWT
OC: 01/15/06 R: 12
Claimant: Respondent (1)

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, 4th 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

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's February 7, 2006 decision (reference 01) that concluded Roberta A. Oberhart (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2006. The claimant participated in the hearing. Susan Nearmyer, the pharmacy department 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 18, 2005. The claimant began working as a pharmacy sales associate.

After the claimant hurt her back at work in March or April, she missed a lot of work. The claimant provided the employer with a doctor's excuse anytime she missed work. The claimant was absent a few days in May after her mother passed away. When the claimant was scheduled to report to work, she ended up having emergency surgery.

On June 7, the employer sent the claimant a letter informing her that her leave of absence was over and she had to contact the employer by a certain date or she no longer had a job. The claimant contacted the employer within the designated time frame. The claimant and employer agreed she would transfer to the cashier department because she still had some weight restrictions.

The claimant then worked as a cashier. The last day the claimant worked as a cashier was July 26. When the claimant called the employer in late July or early August to report she was unable to work as scheduled and had a doctor's excuse verifying she could not work, the employer indicated she no longer had a job because of her repeated absences. The employer also indicated that even though the claimant had a doctor's excuse, it did not make any difference. The employer indicated the excuse would be placed in the claimant's personal file, but she was still discharged.

In mid-August, the store manager asked Nearmyer to sign paperwork indicating the claimant voluntarily terminated her employment because she did not work or notify the employer she was unable to work in the pharmacy department as scheduled on August 15, 16 and 17. The employer never informed the claimant she was scheduled to work in mid-August in the pharmacy department. The claimant never knew she was scheduled to work in the pharmacy department after she transferred to working as a cashier.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence indicates the employer discharged in late July or early August 2005.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts indicate the employer had business reasons for discharging the claimant. As a result of health-related problems, the claimant was not a dependable or reliable employee. Since the claimant provided doctor's statements and notified the employer when she was unable to work, the claimant did not commit work-connected misconduct.

After the claimant agreed to transfer to the cashier department, there was no reason for the claimant to check or ask Nearmyer when she was scheduled to work in the pharmacy department. The facts suggest the employer attempted to schedule the claimant after the employer had already discharged the claimant for continuing attendance issues. Under the facts of this case, the claimant is qualified to receive unemployment insurance benefits as of January 15, 2006.

DECISION:

The representative's February 7, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 15, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc