

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

DEBRA A FRY
3405 – 46TH AVE BOX 105
MOLINE IL 61265

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

Appeal Number: 05A-UI-04626-CT
OC: 04/03/05 R: 04
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 for Misconduct

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. filed an appeal from a representative's decision dated April 19, 2005, reference 01, which held that no disqualification would be imposed regarding Debra Fry's separation from employment. After due notice was issued, a hearing was held by telephone on May 19, 2005. Ms. Fry participated personally. The employer participated by Mike Uitermarkt, Co-Manager.

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. Fry was employed by Wal-Mart from October 24, 1991

until April 4, 2005. She was last employed full time as a lay-away attendant. Ms. Fry was discharged because of her attendance. Her final absence was on March 29, 2005 when she properly reported the intent to be absent due to illness.

All of Ms. Fry's absences were due to her own illness, that of her child, or that of her mother. All of her absences were properly reported. Ms. Fry received warnings about her attendance on April 27 and September 13, 2004. She was given a "decision-making" day on October 20, 2004. Thereafter, Ms. Fry was late on 12 occasions but no further disciplinary action was taken regarding the tardiness. The last occasion of tardiness was on March 28, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Fry 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). Ms. Fry was discharged because of her absences. All of her absences of a full day are considered excused as they were for reasonable cause, her own illness or that of a family member, and were properly reported. Although she had been late reporting to work on a number of occasions, it does not appear that tardiness was a factor in her discharge. This conclusion is based on the fact that Ms. Fry was late at least 12 times after her last disciplinary action on October 20, 2004 but was not discharged until she was absent on March 29.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 19, 2005, reference 01, is hereby affirmed. Ms. Fry was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc