

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

JENNIFER J CINADR
7108 N HILLANDALE RD
DAVENPORT IA 52806

WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00908-H2T
OC 12-14-03 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/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 15, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 17, 2004. The claimant did not participate. The employer did participate through Mike Uitermarkt, Co-Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales clerk part-time beginning July 30, 2002 through October 1, 2003 when she was discharged. The claimant was discharged from employment due to a final

incident of absenteeism that occurred on October 1, 2003 when the claimant was a no-call/no-show to work. The claimant never received a final warning, that she faced termination from employment upon another incident of unexcused absenteeism. The claimant's last warning was given on July 14, 2003. After that, the claimant was absent from work five more days and was late to work on seven occasions. Clearly had the claimant been given a final warning on July 14, 2003 the employer would have terminated her prior to October 1, 2003.

Prior absences occurred on October 30, 2002 (sick), November 3, 2002 (sick), November 16, 2002 (sick), December 28, 2002 (sick), April 26, 2003 (sick), May 11, 2003 (sick), May 25, 2003 (sick), June 1, 2003 (sick), June 2, 2003 (sick), June 14, 2003 (sick), June 20, 2003 (sick), June 22, 2003 (sick), June 24, 2003 (sick), June 25, 2003 (sick), July 23, 2003 (sick), July 27, 2003 (sick), August 9, 2003 (sick), September 6, 2003 (sick), September 27, 2003 (sick). All of the days the claimant had missed were due to properly reported illnesses.

The claimant was tardy to work on December 7, 2002, December 23, 2002, March 31, 2003, April 30, 2003, May 3, 2003, May 22, 2003, June 13, 2003, June 28, 2003, June 29, 2003, June 30, 2003, July 1, 2003, July 2, 2003, July 11, 2003, July 12, 2003, July 24, 2003, August 1, 2003, August 26, 2003, September 10, 2003, September 20, 2003, September 25, 2003 and October 1, 2003.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Because the absences for which she was discharged were related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed, particularly in light of the fact that the claimant had not received a

final warning that her job was in jeopardy upon one more incident of unexcused absenteeism or tardiness.

DECISION:

The January 15, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf