

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA WEIRATHER

Claimant

APPEAL NO: 14A-UI-04034-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/16/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 7, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 7, 2014. The claimant participated in the hearing. Lisa Ashmore, Personnel Coordinator and Kelly Feikert, Assistant Overnight Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time overnight inventory management associate for Wal-Mart from September 6, 2008 to March 19, 2014. She was experiencing a difficult pregnancy and was eventually terminated for excessive absenteeism.

The claimant called in and properly reported she would be absent due to pregnancy-related illness on 26 occasions between January 8 and March 16, 2014. The claimant was already on a second written warning as of January 8, 2014, one for job performance issued October 7, 2012, and a second for a safety violation September 20, 2013.

The claimant worked a few days during the above-stated time frame and on January 26, 2014, the employer offered the claimant intermittent Family and Medical Leave (FML) and she applied January 28, 2014, but her doctor did not submit the required paperwork by February 18, 2014, when it was due and consequently her FML was denied. On March 4, 2014, the employer encouraged the claimant to apply for FML again but the claimant implied she might prefer that her employment be terminated so she could apply for unemployment after she called the employer's third party provider and was placed on hold for a long time. She was depressed, "overly emotional," and "didn't see the point in anything" so she did not continue to call the third party provider and did not apply for FML again.

On March 7, 2014, the employer sent the claimant a certified letter instructing her that she needed to return to work. The claimant received the letter March 12, 2014, but had returned to work half-day shifts March 9, 2014. She worked two days between March 9 and March 19, 2014, and when she reported for work on March 19, 2014, the employer issued her a third written warning. The claimant became ill during her shift and asked if she could go home and the employer asked if she “just wanted to go ahead and do the termination papers” and the claimant said “yes.”

The claimant's due date is August 24, 2014. After a period of trial and error the claimant's physician was able to find a medication that helped her feel significantly better beginning around the second week of March 2014. She is able and available for work at this time but does still have a 20-pound lifting restriction.

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.

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.

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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

Because the claimant's absences in 2014, including the final absence March 19, 2014, were related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The April 7, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css