

**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**

**PAMELA K FALER  
813 E SEVENTH ST  
MUSCATINE IA 52761**

**WALMART STORES INC  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-00780-AT  
OC: 12-07-03 R: 04  
Claimant: Appellant (5)**

**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, 4<sup>th</sup> 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  
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Pamela K. Faler filed a timely appeal from an unemployment insurance decision dated January 12, 2004, reference 01, which disqualified her for benefits upon a finding that she had voluntarily left employment with Wal-Mart Stores, Inc. for failing to report to work for three days in a row without contacting the employer. Due notice was issued for a telephone hearing to be held February 13, 2004. Neither party responded to the hearing notice. This decision is based on information in the administrative file and the claimant's appeal letter.

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Pamela K. Faler was employed as a sales associate by Wal-Mart Stores, Inc. from September 25, 1999 through November 26, 2003. In November 2003, Ms. Faler was on a leave of absence because of an injury which was not related to her work. Although scheduled to return to work on February 10, 2003, she requested and received permission to remain away from work until November 22, 2003. She did not, however, contact the employer until November 26, 2003. When she spoke to the co-manager on September 26, 2003, he discharged her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the separation was an event which disqualifies Ms. Faler for benefits. The first step in the analysis is to characterize the separation. Although the fact-finding determination was put in terms of a voluntary quit, it appears from the evidence that the employer initiated the separation. Thus, it is better characterized as a discharge.

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(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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although absence due to medical conditions are potentially excusable, they are excused only if the individual properly reports the absences to the employer. See 871 IAC 24.32(7). The evidence before the administrative law judge establishes that Ms. Faler said that she would return to work on November 22 but did not contact the employer until November 26, 2003. Because of her failure to notify the employer, the administrative law judge must conclude that the absences between November 22 and November 26 were unexcused. Benefits are withheld.

DECISION:

The unemployment insurance decision dated January 12, 2004, reference 01, is modified. The claimant was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tjc/b