

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M WALDMAN
Claimant

APPEAL NO. 07A-UI-08423-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/08/07 R: 12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dawn Waldman filed an appeal from a representative's decision dated August 30, 2007, reference 01, which denied benefits based upon her separation from Wal-Mart Stores. After due notice was issued, a hearing was held by telephone on September 19, 2007. Ms. Waldman participated personally. The employer participated by Jennifer Ernst and Ms. Judy Carter.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 8, 2001 until February 21, 2007 when she reported a work-related back injury. Ms. Waldman worked as a full-time third shift stocking associate and was paid by the hour. After reporting her back injury, the claimant was examined by a workers' compensation doctor and underwent an MRI. The claimant's workers' compensation claim was denied. Ms. Waldman requested a leave of absence and the leave of absence was granted by the employer and was to expire on April 30, 2007. The leave of absence expired. Ms. Waldman contacted the store manager and was given the latitude of not calling in for the next three days pending her submission of medical information supporting her request for a second leave of absence. When the claimant did not submit the required information, she was informed by a certified letter that additional absences would be counted against her under the company's attendance policy. The claimant was officially discharged from employment on June 12, 2007 after she had not reported back for work and had provided no additional medical documentation indicating that she could not report for work.

Based upon the claimant's March 2007 diagnosis and limitation, at that time that she could not lift more than 10 pounds, the employer attempted to accommodate Ms. Waldman by offering her light duty work as a telephone operator. The claimant declined the offer. The claimant has not

been examined or diagnosed by a medical practitioner since March 2007, but personally feels that she is unable to perform her normal duties at Wal-Mart and continues to desire a light-duty position that requires 10 pounds or less lifting. The claimant has sought employment in the general employment market of a light duty nature.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant's separation from employment took place under disqualifying conditions. Although the testimony in this case is disputed, the administrative law judge concludes based upon a preponderance of the evidence that Ms. Waldman was injured in February 2007 and initially filed a workers' compensation claim. Based upon the medical information available, the workers' compensation claim was denied. The claimant requested and was granted a leave of absence that expired on April 30, 2007. Although the claimant was given the opportunity to provide medical documentation to support her request for an additional leave of absence, the claimant did not provide the documentation and the leave was not granted. The claimant, therefore, came under the provisions of the company's attendance policy and was informed of that fact. When she continued not to report for scheduled work and provided no medical documentation saying that she was unable to report, her attendance infractions were counted against the claimant and she was officially discharged from company rolls on June 12, 2007 pursuant to the company's attendance infraction policy.

As the claimant has supplied no medical documentation verifying that she is unable to report for work or that she was unable to perform the duties that were available to her at Wal-Mart Stores, the administrative law judge must conclude that the claimant's separation from employment took place under disqualifying conditions. Although the claimant has not been examined or diagnosed by a medical practitioner since March 2007, the claimant continues to believe that she cannot report for scheduled work at positions available to her because of medical reasons. There is no evidence in the record to support the claimant's contention.

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.

For the reasons stated herein, the administrative law judge finds that the claimant's separation from employment took place under disqualifying conditions. Unemployment insurance benefits

are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 30, 2007, reference 01, is hereby affirmed. The claimant's separation from employment took place under disqualifying conditions. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs