

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY L HODGES**

Claimant

**APPEAL NO. 08A-UI-02483-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 02/03/08 R: 01  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Amy Hodges, filed an appeal from a decision dated March 3, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 27, 2008. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Assistant Manager Cheryl McKevitt.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Amy Hodges was employed by Wal-Mart from February 23, 2004 until February 6, 2008. At the time of separation she worked full time as an overnight stocker from 10:00 p.m. until 7:00 a.m. She received written warnings on June 20, September 21 and December 29, 2007, for absenteeism. Ms. Hodges had missed approximately ten days of work all of them due to sick children. The final warning was a decision making day and she was advised her job was in jeopardy if she missed any more work.

On February 3, 2008, the claimant called and reported she would be absent. Her grandmother was hospitalized and was not expected to live through the night. The employer was notified of the absence and discharged the claimant on February 6, 2008, for the final incident of absenteeism.

## REASONING AND CONCLUSIONS OF LAW:

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.

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.

The claimant had been absent a substantial number of days, and all but one appear to have been properly reported under company policy. The final absence was also properly reported. This was due to a family medical emergency which cannot be considered a willful and deliberate act of misconduct on the part of the claimant. As there was no final act of misconduct as required by 871 IAC 24.32(8), disqualification may not be imposed.

**DECISION:**

The representative's decision of March 3, 2008, reference 01, is reversed. Amy Hodges is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs