

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAKEEM T COLEMAN
Claimant

APPEAL NO. 10A-UI-12233-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 11/15/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 20, 2010, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 18, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Vicky Popsil participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as an unloader for the employer from January 28, 2010, to April 3, 2010. He received a verbal counseling on February 28 for taking a bottle of water. He received a written counseling on March 19 for having four absences. He was suspended on March 22 for leaving work without clocking out. This is the last step in the discipline policy before termination.

The employer discharged the claimant on April 5, 2010, for being absent without notice on April 4. In fact, the claimant had asked his supervisor for the day off on April 4 in advance before the schedule was posted. When he reminded the supervisor about his request for the day off, he was told that he could have the day off but should try to find someone to work for him. The claimant was not successful in finding a replacement and told the supervisor on April 3 that he could not find anyone to work for him. His supervisor knew the claimant was not coming in on April 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The final absence was a day the claimant requested off and was told he could have off by a supervisor.

DECISION:

The unemployment insurance decision dated August 20, 2010, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs