

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

WENDY M BABBITT
700 S 13TH ST
CLEAR LAKE IA 50428

WAL-MART STORES INC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-06890-HT
OC: 03/27/05 R: 02
Claimant: Respondent (1)

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, 4th 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

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated June 21, 2005, reference 03. The decision allowed benefits to the claimant, Wendy Babbitt. After due notice was issued, a hearing was held by telephone conference call on July 21, 2005. The claimant participated on her own behalf. The employer participated by Store Manager Stewart Anderson. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Wendy Babbitt was employed by Wal-Mart from November 22, 2003 until March 18, 2004. She was a full-time overnight associate.

On January 10, 2004, she entered a last chance agreement with the employer regarding substance abuse rehabilitation. The agreement required her, among other things, to bring in a doctor's note excusing any absences in the future. On March 18, 2004, Ms. Babbitt was absent from work. She did not call in but her boyfriend did on her behalf. However, Wal-Mart policy considers it to be unexcused if the associate does not call in personally.

The next day the claimant went to the doctor early in the morning and got a note excusing her from work. However, when she reported for work at 10:00 p.m. that evening and gave the note to her supervisor, Carrie, she was discharged for violation of the last-chance agreement.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not

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).

The employer asserts the claimant was discharged for violation of the last-chance agreement. However, there is nothing in the record to support this. Her absence was reported to the employer, she had a doctor's note she presented to her supervisor, and all of this was in accordance with the agreement. The employer has failed to establish any willful and deliberate misconduct on behalf of the claimant and disqualification may not be imposed.

DECISION:

The representative's decision of June 21, 2005, reference 03, is affirmed. Wendy Babbitt is qualified for benefits provided she is otherwise eligible.

bgh/kjw