

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM E ORR**  
Claimant

**APPEAL NO. 07A-UI-04405-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 04/08/07 R: 02**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

William Orr filed an appeal from a representative's decision dated April 24, 2007, reference 01, which denied benefits based upon his separation from Wal-Mart Stores. After due notice was issued, a telephone conference hearing was scheduled for and held on May 16, 2007. Claimant participated personally. The employer participated through Ryan Collison, assistant manager.

**ISSUE:**

The issue is whether the claimant was discharged from his employment for intentional disqualifying misconduct.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: Mr. Orr was employed by Wal-Mart Stores from September 24, 2002 until April 5, 2007, when he was discharged. Mr. Orr worked as an overnight maintenance worker on a full-time basis working from 11 p.m. until 8 a.m. and was paid by the hour. Mr. Orr was discharged on April 5, 2007, for reporting to work late eleven days earlier on March 25, 2007. The claimant had been given a verbal warning in June 2006 and a written warning on December 17, 2006. After being most recently warned, the claimant had not been late in reporting to work until the final incident. Mr. Orr had called in on approximately three occasions indicating that he was unable to report for work for medical reasons, which included hospitalization, heart problems, and influenza. The claimant's most recent attendance infraction occurred when he reported late on March 25, 2007, when medications taken for his chronic heart condition caused him to oversleep.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge in this case concludes, based upon the evidence in the record, that the claimant was discharged from employment for no disqualifying reasons.

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.

An employer may discharge an employee for any number of reasons or for no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof in establishing job-related misconduct as the reason for separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not determinative of the issue of qualification for benefits. Because the most recent absences, which were a partial basis for a decision to terminate the claimant, were properly reported and due to illness, they were not disqualifying conduct. The final incident occurred when Mr. Orr reported to work late when he inadvertently overslept by a few minutes due to the effects of heart medication that he was taking for his chronic heart problem. The claimant reported to work as soon as possible to minimize any impact upon the employer. This was the claimant's first tardiness since being warned on December 17, 2006. Although the employer was aware that Mr. Orr had reported late on March 25, 2007, they did not discharge him until eleven days later, when it was convenient for the employer to do so.

For the above-stated reasons, the administrative law judge finds no disqualifying conduct on the part of the claimant at the time of separation. The claimant's most recent absences were properly reported and due to medical reasons, and the final incident was for a reason beyond the claimant's control. The administrative law judge finds that there was no current active misconduct at the time of the claimant's separation eleven days after the most final incident. Benefits are allowed.

#### **DECISION:**

The representative's decision dated April 24, 2007, reference 01, is hereby reversed. The claimant was separated under non-disqualifying conditions and is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of the law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

tpn/kjw