

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUNA T HICKEY
Claimant

APPEAL NO. 10A-UI-08979-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/09/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Shauna T. Hickey filed a timely appeal from a representative's decision dated June 14, 2010, reference 01, which denied benefits finding the claimant voluntarily left employment on February 25, 2010 without good cause attributable to the employer. After due notice, a telephone hearing was held on August 10, 2010. Claimant participated personally. Participating on behalf of the claimant was Mr. Bruce Stoltse, Attorney at Law, 300 Walnut, STE 360, Des Moines, Iowa 50309. Although duly notified, the employer declined to participate because the claimant was represented.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Shauna Hickey began employment with Wal-Mart Stores on October 6, 2008 and most recently worked as a full-time pharmacy manager. On February 26, 2010, Ms. Hickey began an approved medical leave of absence under the Family Medical Leave Act. It was agreed by the parties that the claimant would return to work on April 2, 2010. For medical reasons the approved leave of absence was extended until May 1, 2010.

On May 1, 2010, Ms. Hickey attempted to return to her position with Wal-Mart Stores. The claimant was fully released by her physician with the exception that the claimant was initially to work six-hour shifts for two weeks and then eight-hour shifts for an additional two weeks with the assistance of another pharmacist. Although Ms. Hickey offered to return to work at her normal work location or any other Wal-Mart store within the state of Iowa, the employer declined to re-employ Ms. Hickey and posted her job. Ms. Hickey filed a claim for unemployment insurance benefits with an effective date of May 9, 2010. After being separated from her employment with Wal-Mart, Ms. Hickey actively sought re-employment with other perspective employers and began new employment on June 14, 2010. Ms. Hickey received unemployment

insurance benefits in the amount of \$374.00 for the benefit weeks ending May 15, May 22, May 29 and June 5, 2010. On June 21, 2010, the claimant received retroactive pay from Wal-Mart Stores through May 26, 2010 plus one week accrued vacation pay.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant has been separated from her employment with Wal-Mart Stores and if so, whether the separation from employment is disqualifying.

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.

The evidence in the record establishes that Ms. Hickey did not voluntarily quit her employment with Wal-Mart Stores. The evidence establishes the claimant was discharged by Wal-Mart Stores when she had exhausted all leave available to her on her medical leave and leave under the Family Medical Leave Act. Because the claimant was not fully released and had a limitation on the initial number of hours she could work each day, the employer chose to replace the claimant and separate her from her employment with the company. As the reason for the claimant's separation was not due to intentional, disqualifying misconduct, the administrative law judge concludes that the claimant's separation from employment took place under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible. Benefits paid to the claimant are offset by retroactive pay that exceeded her weekly benefit

amount through the week ending May 29, 2010 and by one week's vacation pay attributable to the week ending June 5, 2010.

DECISION:

The representative's decision dated June 14, 2010, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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