

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOMER L WEBB
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 14A-UI-06963-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/08/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated June 27, 2014, reference 01, that held he was discharged for excessive unexcused absenteeism on June 10, 2014, and benefits are denied. A hearing was held on July 29, 2014. The claimant participated. Nicole Annis, HR Coordinator, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on October 20, 1998 and last worked as a full-time hourly associate on June 10, 2014. The claimant received the employer attendance policy that provides seven absences within six months are grounds for discharge. The employer uses progressive discipline to inform an employee there is an attendance problem. A third coaching (written warning) must be issued prior to termination. The employer does not consider the absence reason.

The employer issued claimant a third written coaching on April 24, 2014 for leaving two hours early. Claimant was at seven absences within six months. Claimant was absent 13 consecutive days in May due to health issues related to his diabetes. Claimant's application for a leave of absence was denied by an employer third party provider. These absences were considered as one by the employer when claimant returned to work.

Claimant reported an absence due to illness on June 3, and he later provided a doctor excuse to the employer. The employer terminated claimant on June 10, 2014 for violation of the attendance policy after having issued a third coaching.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(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 administrative law judge concludes employer failed to establish a current act of misconduct in the discharge of the claimant on June 10, 2014, for excessive "unexcused" absenteeism.

The employer does not accept medical excuses for absences. The most recent claimant absence on June 3 was due to properly reported illness and doctor excused. The most recent period of claimant absenteeism (May 2014 - 13 absences) was due to health problems related to diabetes that the employer counted as one unexcused absence. Absences that are due to properly reported illness is for an excusable reason. Job disqualifying misconduct is not established due to the lack of any current act of misconduct.

DECISION:

The decision of the representative dated June 27, 2014, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on June 10, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs