

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY R BECKMAN
Claimant

APPEAL NO: 13A-UI-07013-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/05/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 4, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Jason Rainboth, the assistant manager for merchandise, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2007. When he started his employment, the claimant received a copy of the employer's attendance policy. The attendance policy informs employees they can be discharged if they accumulate seven attendance occurrences in a rolling calendar year. Three tardies equal one attendance occurrence. The employer starts progressive discipline at the fourth attendance occurrence.

After the employer went to a computer scheduling employees' hours, the claimant experienced problems getting to work on time since he was a full-time student and had to drive 30 miles to work. Also after the computer took over the scheduling, the claimant was scheduled to work four-hour shifts instead of eight-hour shifts. Driving to work so many times a week with college was difficult on the claimant. The claimant did not change the hours he was available to work because he did not want his hours reduced. The claimant asked the employer about working eight-hour shifts, but he was not scheduled for eight-hour shifts.

When the claimant let Rainboth know in advance he would be late for work because of his class schedule, Rainboth could approve the claimant's reporting to work late after the computer started scheduling employees. On April 3, 2013, the claimant received a written warning for attendance issues. On April 17 and 19, the claimant called in sick. He went to the doctor on April 17, but did not get a doctor's statement. The claimant reported to work on April 20. When

the claimant left work, he did not feel well. The claimant was scheduled to work on April 21, but he overslept because he was still ill. On April 22, the claimant called in sick, but he was not ill. He stayed home to work on a school project with another student.

On April 27, Rainboth talked to the claimant about his recent absences. He asked the claimant if he could provide a doctor's excuse for the days he had called in sick so these absences could be approved. The claimant told Rainboth that he could not provide a doctor's statement even though he had seen a doctor on April 17. On April 28, the employer discharged the claimant for excessive absenteeism. The claimant had 11 absent occurrences and the employer can discharge an employee at seven absent occurrences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

After the claimant received the April 3, 2013 written warning, he knew or should have known his job was in jeopardy and if he missed any more work he could be discharged. Since the claimant testified that he saw a doctor on April 17, it was not logical for him to tell Rainboth he could not get a doctor's statement. Even if the claimant had provided a doctor's statement to verify he was ill, he was not ill on April 22. Instead, he made the decision to call off work because he had to work on a school project. While the claimant had personal reasons for being absent on April 22, 2013, his failure to report to work as scheduled in addition to misrepresenting why he was not at work that day amounts to an intentional and substantial disregard of the standard the employer has a right to expect. The claimant committed work-connected misconduct. As of May 5, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 4, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of May 5, 2013, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css