

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY A FRANKS**

Claimant

**APPEAL NO. 06A-UI-11797-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 11/05/06 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7- Recovery of Overpayments

**STATEMENT OF THE CASE:**

Wal-Mart Stores, Inc. filed a timely appeal from an unemployment insurance decision dated November 28, 2006, reference 01, that allowed benefits to Mary A. Franks. After due notice was issued, a telephone hearing was held December 26, 2006 with Store Manager Doug Pate and Assistant Manager Jennifer Wittman participating for the employer. Ms. Franks did not provide a telephone number at which she could be contacted. The administrative law judge takes official notice of agency benefit payment records.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all matters of record, the administrative law judge finds: Mary A. Franks was employed by Wal-Mart Stores, Inc. from February 11, 2006 until she was suspended October 31, 2006 and discharged November 3, 2006. The final incident leading to the discharge was Ms. Franks' absence without contact on October 31, 2006. She had also been absent without contact on September 14, 2006. In addition to these absences, Ms. Franks on occasion had violated company policy by not taking her scheduled meal breaks.

Ms. Franks has received unemployment insurance benefits since filing a claim effective November 5, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in the record establishes that Ms. Franks was absent without contact twice in less than two months. The evidence also establishes that she failed to take scheduled meal breaks on occasion, a violation of company policy. Taken together, this evidence is sufficient to establish misconduct. Benefits are withheld. In reaching this conclusion, the administrative law judge does not consider the claimant's absences for personal illness or for the illness of her children as it appears from the employer's testimony that these absences were properly reported to the employer.

Ms. Franks has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

**DECISION:**

The unemployment insurance decision dated November 28, 2006, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$281.00.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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