

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH J LONG

Claimant

APPEAL NO. 15A-UI-11650-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 09/27/15

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 15, 2015, reference 01, which denied unemployment insurance benefits finding the claimant had been discharged from work for excessive, unexcused absenteeism after being warned. After due notice was provided, a telephone hearing was held on November 3, 2015. Claimant participated. Although duly notified, the employer did not participate.

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 the evidence in the record, the administrative law judge finds: Sarah Long was employed by Wal-Mart Stores, Inc. from October 28, 1997 until September 29, 2015 when she was discharged from employment. Ms. Long was employed as a full-time cashier and was paid by the hour. Her immediate supervisor was Trayla Osborne.

Ms. Long was discharged on Tuesday, September 29, 2015 because her absences due to illness on September 22 and 23 had caused her to exceed the permissible number of attendance infraction points allowed under the company's no fault attendance policy. Ms. Long had properly called in on both September 22 and 23 to report that she was ill and unable to report for work and had been allowed to continue employment by the company on September 24, 2015 through September 29, 2015 when she was discharged.

Under the terms of the company's attendance policy, an employee is subject to discharge if they exceed a set number of attendance infractions in a 12-month period. The reason for the employee's absence is not considered by the employer under the terms of the policy. Ms. Long had received a final attendance warning from the company approximately two months before her discharge. All the claimant's absences during the 12 months preceding her discharge were due to illness or injury and had been properly reported by the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984).

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. The employer's no fault absenteeism policy is not dispositive of the issue of qualification for benefits. Excessive absences are not considered misconduct unless unexcused. Absences due to illness that are properly reported are considered excused under the provisions of the Employment Security Law.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must first establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). Ms. Long testified that all absences during the reporting period were due to illness or injury and that she had properly notified the employer of each absence following company procedures.

The most recent absence that prompted the decision to discharge Ms. Long was when the claimant called off work due to illness on September 22 and 23, 2015. Absences related to illnesses are considered excused, providing the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the claimant's unexcused absences were not excessive and that the most recent absences that prompted the decision to discharge the claimant were due to illness and were properly reported to the employer.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated October 15, 2015, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs