

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAZMN C NAPIER
Claimant

APPEAL NO. 15A-UI-08689-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO FINANCIAL NAT'L BANK
Employer

OC: 07/12/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jazmn Napier filed a timely appeal from a representative's decision dated July 28, 2015, reference 01, which denied unemployment insurance benefits finding that she was discharged from work on July 9, 2015 for repeated tardiness after being warned. After due notice was provided, a telephone hearing was held on August 25, 2015. Claimant participated. The employer participated by Mr. Steven Zacks, Hearing Representative, Barnett Associates, and witnesses, Ms. Monica Hinga, Customer Service Supervisor and Ms. Shelly Law, Customer Service Manager. Employer's Exhibits A, B, C, D, E and F and Claimant's Exhibit One were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Jazmn Napier was employed by Wells Fargo Financial National Bank from April 1, 2013 until July 9, 2015 when she was discharged for exceeding the permissible number of attendance infraction points under the company's attendance policy. Ms. Napier was employed as a full-time customer service representative III and was paid by the hour. Her immediate supervisor was Monica Hinga.

Ms. Napier was discharged from her employment with Wells Fargo Bank on July 9, 2015 because sufficient medical documentation had not been received by the employer to justify the company not excusing previous absences by Ms. Napier that had been related to illness or injury of the claimant or close family members. Under established company attendance policy, employees are subject to termination if they accumulate a set number of attendance infractions within a set period of time and employees are usually warned when their unexcused absenteeism becomes excessive and additional disciplinary actions might be taken.

If the employee is able to establish sufficient grounds through medical documentation and requests the employer “accommodate” the claimant because of a demonstrated ongoing medical issue, attendance infraction points will not be assessed against the employee for medical-related absences.

During the six months preceding her separation from employment, Ms. Napier called off work or left early on 12 occasions. On each occasion the claimant provided notification of her impending absence that was satisfactory to her employer. On each occasion that Ms. Napier called off work, the claimant informed her employer that she was going to be absent due to the illness of herself or her children.

Prior to discharging Ms. Napier, Wells Fargo Bank urged Ms. Napier to supply the required medical documentation that would allow the company to forgive her 12 unexcused absences as a medical accommodation. It appears that some delay may have been caused by Ms. Napier’s non-ability to explain what was needed to her doctor. Subsequently, the claimant was informed by the employer that she must have had required medical documentation submitted to the company by July 7, 2015 or she would be discharged from employment. The final attempt by Ms. Napier to obtain the necessary documentation before the deadline set by the employer was unsuccessful as the claimant’s medical practitioner was herself undergoing eye surgery and not available to supply a documentation.

Prior to the claimant’s termination from employment, she had received a formal written warning for six occurrences of tardiness during the period December 4, 2014 through April 27, 2015. The final incidents that caused the claimant’s discharge took place on July 8 and 9, 2015. On July 8, 2015, Ms. Napier called off work stating that she was ill and vomiting. That day, the employer made a decision to consider the claimant’s previous absences as unexcused because the claimant’s request for medical accommodation could not be granted. Ms. Napier was discharged via telephone on July 9, 2015. The contact between the parties that day was initiated by the employer and the claimant reported that she was still ill. The employer’s witness testified that both the timing and the manner of the notification provided by Ms. Napier was acceptable to the company as proper notice that she would not be reporting for work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the evidence establishes that the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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.

In discharge cases, the employer has the burden of proof to establish disqualifying misconduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the claimant was discharged when she failed to provide sufficient medical documentation through her medical practitioner to allow the employer to excuse absences as a medical accommodation. When the claimant was unable to supply sufficient documentation to the employer by July 7, 2015, the employer elected to discharge the claimant because the company considered the absences to be unexcused and excessive.

Based upon the evidence in the record, the administrative law judge concludes that the claimant's inability to have sufficient documentation submitted to her employer by her medical practitioner was not due to intentional disqualifying misconduct on the part of the claimant. After the employer set a deadline for the information, Ms. Napier attempted to the best of her ability to have the information provided, however, it was not available at that time because the practitioner was having surgery.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings.

However, the evidence must first establish the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and babysitting are considered unexcused. Absences related to illness are considered excused provided that the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The evidence in the record establishes that although the claimant had called off work on 12 occasions during the six months preceding her discharge, the absences were almost exclusively due to the illness of Ms. Napier or her children and were considered properly reported by the employer. Because the final absence for which the claimant was discharged was related to what was considered to be a properly report absence due to illness, no final or current incident of unexcused absenteeism has been established and no disqualification for unemployment insurance benefits is imposed.

DECISION:

The July 28, 2015, reference 01, decision is reversed. The claimant was dismissed under non-disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible and meets all eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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