

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH A BUTTS

Claimant

APPEAL NO. 13A-UI-14324-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 12/01/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated December 19, 2013, reference 01, that denied unemployment insurance benefits. A telephone hearing was scheduled for January 23, 2014. The claimant, the appellant herein, did not respond to the notice of hearing. The employer participated by Mr. John O’Fallon, Hearing Representative and witness, Ms. Sandra Phillips, Manager. Based upon the appellant’s failure to participate in the hearing, the administrative file and the record, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Sandra Butts was employed by Wells Fargo Bank from November 28, 2005 until November 26, 2013 when she was discharged for excessive absenteeism and tardiness after being warned. Ms. Butts was employed as a full-time representative III and was paid by the hour. Her immediate supervisor was Sandra Phillips. The claimant was discharged for exceeding the permissible number of attendance infractions allowed under company policy. The claimant had been issued a verbal warning, a written warning and a final warning prior to her termination. During the final months of her employment the claimant had been absent because of illness, lack of babysitters and had been tardy on four occasions. The final infraction that caused the claimant’s discharge took place due to transportation issues. Ms. Butts called in on November 22, 2013 indicating that she would be taking a taxi to work. The claimant did not report for work for the remainder of the day. Although the claimant had not been discharged from employment, Ms. Butts did not report for scheduled work on Monday, November 25, 2013 and was considered to be a no-call/no show at that time. When contacted by the employer the claimant stated that she expected to be discharged because of attendance.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

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.

871 IAC 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.

871 IAC 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 has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The claimant was discharged when she exceeded the permissible number of attendance infractions allowed under company policy. The claimant's absences and tardiness were excessive and unexcused. The final infraction that caused the claimant's discharge took place when the claimant did not report to work because of transportation issues. The Supreme Court of the state of Iowa in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility" such as transportation problems and oversleeping are considered unexcused. For the reasons stated herein the administrative law judge concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated December 19, 2013, reference 01, is affirmed. The representative's decision remains in effect. This decision will become final unless the appellant makes a request to the administrative law judge within 15 days after the mailing date of this decision requesting reopening and explaining the good cause that prevented the appellant from participating in the hearing at its scheduled time or files an appeal with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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