

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN T WOODS

Claimant

APPEAL NO. 11A-UI-11189-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 07/24/11

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 19, 2011 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. The employer faxed a letter to the Appeals Section stating that the employer decided it would not participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant 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 November 2009. The claimant worked full-time as a home mortgage collector. The claimant started working at the employer's Jordan Creek location but had transferred to the employer's downtown location.

The claimant understood the employer's attendance policy stated employees could be discharged if they had excessive absenteeism. When an employee accumulated eight attendance points, the employer started its progressive disciplinary procedure. During his employment, the claimant received verbal and written warnings about his attendance. In early June 2011, the claimant received a final warning for failing to work as scheduled. After receiving the final written warning, the claimant understood his job was in jeopardy. The claimant, a single-parent, primarily missed work because when his young children are sick, he cannot take them to daycare and stays home to take care of them.

In July 2011, the claimant lived in Johnston. He did not have a car or license, so his mother drove him to work. On his way to work with his mother on July 27, she had a flat tire. His mother did not have a jack in her car, so the claimant could not put on the spare tire. He called friends and co-workers in an attempt to get to work on time. No one could help him. The claimant called his supervisor to let the employer he would be late for work and why. His supervisor told the claimant that if was not at work by 8 a.m., he would receive an attendance

occurrence. It was 9 a.m. by the time the claimant got a spare tire on his mother's car. The employer discharged the claimant on July 28 for violating the employer's excessive absenteeism policy.

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).

The employer followed its attendance policy and discharged the claimant when he did not work as scheduled on July 27, 2011. The employer established justifiable business reasons for discharging the claimant. The claimant knew his job was in jeopardy after he received his final written warning in June. If the claimant had been absent on July 27 because his children were sick and he again stayed home without taking reasonable steps to have someone care for a sick child, he may have committed work-connected misconduct. The facts in this case show he had no knowledge he would not be at work as scheduled on July 27. The claimant had no way of knowing his mother would have a flat tire while she was in the process of driving him to work. The claimant notified the employer immediately and learned he had to be at work by 8 a.m. Although the claimant took steps to get to work after his mother's car had a flat tire, he was not successful. The claimant had no control over the July 27 absence and took reasonable steps to get to work on time. Under the facts in this case, the claimant did not commit work-connected misconduct. Therefore, as of July 24, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's August 19, 2011 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. Base on the reasons for the claimant's last absence, he did not commit work-connected misconduct. As of July 24, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw