

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIAN MATIAS**

Claimant

**APPEAL NO: 13A-UI-11993-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**

Employer

**OC: 09/22/13**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 15, 2013 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 informed the Appeals Section prior to the hearing that the employer was not participating at 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 early March 2013. He worked as a full time customer service representative. The employer's attendance policy defines excessive absenteeism as 10 or more unscheduled absences in six months. The employer gave the claimant a written warning in late August or early September that his on-going absences were excessive and he needed to correct his attendance immediately. The claimant understood that if had any more unscheduled absences, his job was in jeopardy.

The claimant learned he was not eligible to receive FMLA. The employer would grant him a personal leave of absence for two weeks, but this was unpaid and did not guarantee him his job at the end of the leave. The claimant did not take a leave of absence.

The majority of the claimant's absences occurred because his younger brother, who lived with the claimant and his family, had behavioral issues. These problems began in April. In September the claimant was in the process of going to the Department of Human Services for assistance.

The week of September 23, the claimant notified the employer each day that he was unable to work because of on-going issues with his brother. The claimant's brother was suicidal and talked about hurting himself and others. The claimant advised the employer about the

seriousness of his brother's issues. On September 26, 2013, the employer discharged the claimant because of his on-going attendance issues even after he received a written warning. The claimant accumulated too many attendance points and violated the employer's attendance 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. excessive absents. 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 established justifiable business reasons for discharging the claimant. The claimant established reasonable grounds for his absences. Therefore, the claimant did not commit work-connected misconduct. As of September 22, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 15, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of September 22, 2013, the claimant is qualified to receive benefits, provided he meets all eligibility requirements. The employer's account will not be charged.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs