

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREY HARSHBARGER
Claimant

APPEAL NO. 10A-UI-07557-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**Original Claim: 04-25-10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 21, 2010, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 12, 2010. The claimant participated in the hearing with current employee Heather Davis. Chris Schmitt, Loan Administration Manager, and Mary Otu, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time Operations Clerk 2 for Wells Fargo Bank from February 16, 2009 to May 5, 2010. She worked the 3:30 p.m.-to-12:00 a.m. shift. On April 12, 2010, her abusive husband, who worked the overnight shift, left her home and on April 13, 2010, she called the employer's absence line and reported she would not be in. On April 13, 2010, her child care provider accepted a position outside her home that began immediately and she was left without childcare. Consequently, she called the absence line every workday between April 13 and May 5, 2010, to report she would not be at work while she looked for childcare for a shift for which it was difficult to find childcare. She also spoke directly to her supervisor by phone and text to keep him apprised of what was happening and her progress in finding childcare. The childcare issue first became a problem in February 2010 and the claimant was allowed to work from 6:15 a.m. to 2:45 p.m. for the month of March 2010, but the employer only allows employees to change shifts for one month unless there is an opening they qualify for on another shift permanently. Her supervisor did speak to her about contacting the Leave Administration Team about a leave of some kind, but the claimant misunderstood and thought he was telling her to talk to Human Resources about childcare. She did talk to Human Resources, but it was unable to help her with childcare, because she worked the night shift. Her family lives in Washington State and one of her cousins made arrangements to take a leave of absence from her job to come to Iowa and help the claimant with her childcare issues but was

not able to start until May 14, 2010. The claimant's supervisor sent her a letter April 29, 2010, stating that if she did not return to work by May 5, 2010, she would be considered to have voluntarily quit her job. The claimant contacted her supervisor and explained her cousin would be coming May 14, 2010, and asked for an extension but was denied. She continued to call in until May 5, 2010, and to try to find childcare but was unable to do so and her employment ended May 5, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While the claimant tried desperately to find childcare for her 3:30 p.m.-until-12:00 a.m. shift, she was unable to do so, as she understandably did not want to leave her children with her abusive husband, who was her back-up childcare provider, after her regular childcare provider quit unexpectedly and without notice to accept another job. That shift was very difficult to find childcare for and the providers she did find were outside her child's school district and, as a result, would not provide transportation from his school to the childcare facility. The claimant did convince a cousin from Washington State to come to Iowa to help her with childcare, but she could not get to Iowa until May 14, 2010, and the employer declined to hold her position beyond May 5, 2010. The employer did let her work first shift for the month of March 2010 and told her to call the Leave Administration Team but did not make that option clear; and the fact that her supervisor refers to FMLA as "femla" made it difficult for her to understand that he was talking about some type of leave rather than contacting human resources about help with childcare, which they were unable to give and did not point her in the direction of FMLA and Leave Administration. Unfortunately, while the administrative law judge believes the claimant was unable to work for compelling personal reasons, did everything possible to secure childcare but was unable to do so and that once again childcare issues fall disproportionately on working mothers, the

claimant's absence exceeded ten working days and, consequently, cannot be classified as a voluntary leaving with good cause attributable to the employer. The claimant had no intent to quit her job and was discharged for excessive absenteeism. Although her cousin was coming to provide childcare, the employer would not wait for her to arrive May 14, 2010, and terminated the claimant's employment May 5, 2010, as her last day worked was April 12, 2010. While sympathetic to the claimant's situation, the administrative law judge must conclude that she was discharged for excessive, unexcused absenteeism, as her absences were due to lack of childcare, which is an issue of personal responsibility, and, therefore, benefits must be denied.

DECISION:

The May 21, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw