

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET K REEM

Claimant

APPEAL NO. 08A-UI-02520-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 02/17/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 11, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 31, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Arika Brindley participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a collections representative from April 30, 2007, to February 20, 2008. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant had been warned several times regarding absenteeism and tardiness. On February 7, 2008, the claimant received a written warning because she was 15 minutes late for work on January 8, 15 minutes late returning from lunch on January 9, 45 minutes late for work on January 20, and 30 minutes late returning from lunch on January 31. On February 7, the claimant took 15 minutes more than she was allowed for lunch and 30 minutes more than she was allowed for her afternoon break. She was warned that if she had any additional tardies before May 7, 2008, that she could be terminated.

The claimant does not have her own transportation to work and relies on taking the bus or a cab to work. There have been occasions in the past that the claimant has been absent or late due to transportation problems. Most recently, the claimant's lateness on January 20 was due to her cab being late picking her up.

On February 20, 2008, the claimant was scheduled to work at 8:00 a.m. but punched in at 8:06 a.m. because her cab was late picking her up. She had called the cab company at 5:00 a.m. to order a cab to pick her up but the cab did not arrive until 7:45 a.m. The claimant

called the cab company several times between 5:00 a.m. and 7:45 a.m. to check on her ride. She called her supervisor at 7:30 a.m. to let her supervisor know that her cab was late.

The employer discharged the claimant on February 20, 2008, for excessive tardiness in violation of the employer's attendance policy and her final warning.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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:

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 claimant had a long history of tardiness for which she received repeated discipline. She had been late before due to transportation problems and knew that the employer did not consider her lack of dependable transportation to provide a legitimate excuse for tardiness. The

claimant's tardiness on February 20, 2008, in combination with her past history of lateness and warnings constitutes work-connected misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated March 11, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs