

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAY SHRIVER
Claimant

APPEAL NO. 07A-UI-07189-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 06-24-07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 16, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 8, 2007. The claimant participated in the hearing. Luann Wirtz, Operations Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 processor II for Wells Fargo Bank from August 12, 2003 to June 22, 2007. The employer's attendance policy states that after four unscheduled counselable absences in a rolling six month period the employee receives an informal written warning that is in place for 60 days. If the employee accumulates another absence during the 60-day period she receives a formal written warning that is in place for 90 days. Another accumulated absence during the 90-day period her employment is terminated. The claimant was absent due to properly reported illnesses December 22, 2006; February 5 and 6; March 15; May 25, 29 and 31, 2007. On June 22, 2007, her cell phone alarm did not go off because the battery was dead and she overslept. The employer tried to contact her but the claimant never received the message because her phone was not working and rather than wait for her phone to charge and call the employer she proceeded to go to work around 1:30 p.m. and was discharged for violating the employer's attendance policy. She received an informal warning March 15, 2007, and received her second informal and first formal warnings June 4, 2007, for absences due to illness May 29 and 31, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant exceeded the allowed number of attendance occurrences and was warned about her attendance by the employer, all but her last absence were due to properly reported illness, which is not considered misconduct under Iowa law. Therefore, the last absence, although not excused, does not rise to the level of disqualifying job misconduct as defined by Iowa law. Consequently, benefits are allowed.

DECISION:

The July 16, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css