

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN E GILBERT
Claimant

APPEAL NO. 13A-UI-11920-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/22/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 10, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on November 14, 2013. Claimant participated. Employer did participate through Sara Billingsley, Collections Supervisor and was represented by Frank Landolphi, of Barnett Associates. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a collector beginning on November 5, 2012 through September 10, 2013 when she was discharged. The claimant had been on approved leave and had demonstrated an ability to properly notify the employer about her absences. Due to unfortunate circumstances in her personal life the claimant simply became overwhelmed and stopped communication with the employer after July 29, 2013. The employer attempted to contact the claimant via telephone and sent her letter on August 21, 2013 giving her multiple opportunities to provide additional medical information. The claimant was eligible for additional unpaid leave if she had simply provided the employer with the required documentation. When the employer had not heard back from the claimant by September 10, 2013, she was discharged for excessive unexcused absences. The claimant had an obligation to keep the employer informed about her situation and to provide the required documentation. She did not and her absences after July 29, 2013 are considered unexcused.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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). Absences due to **properly reported illness** or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant's absences are not considered excused as she did not report them at all.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 10, 2013, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css