

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LASHONE D POLK
Claimant

APPEAL NO. 12A-UI-03231-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 02/12/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 26.8(5) – Decision on the Record
871 IAC 26.14(7) – Request to Reopen

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 21, 2012, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on January 30, 2012, and which allowed benefits. A hearing was scheduled for April 12, 2012. The claimant was available to participate. Kelly Landolphi, representative, was available to participate for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds that: The claimant worked as a full-time home preservation specialist from August 16, 2010 to January 24, 2011. The employer discharged claimant for excessive absenteeism on January 24, 2012.

The employer witness could not be reached at three telephone numbers provided by the employer representative. The employer representative stated he had no knowledge about the employer's case, and ended his involvement. Claimant elected to stand on the evidence in the record.

Tammy Cook, the employer witness who was called for the hearing, stated there were telephone issues at the work place as the reason she could not be reached for the hearing. Ms. Cook called at 9:15 a.m. to report for the 9:00 hearing.

REASONING AND CONCLUSIONS OF 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.

The administrative law judge concludes the employer failed to establish misconduct in the discharge of the claimant on January 24, 2012, for excessive "unexcused" absenteeism. The employer failed to offer direct evidence in this matter to establish job-disqualifying misconduct.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The employer failed to establish a good cause to reopen the record. It has an obligation to provide a direct line communication number to the designated witness to be reached for the hearing. There were three separate attempts to reach the employer witness at different numbers, and one call reached a working number that identified the witness in recorded message. In addition, the employer witness did not contact UI Appeals until 15 minutes had elapsed from the scheduled hearing start time.

DECISION:

The representative's decision dated March 21, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on January 24, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw