

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN NAIL

Claimant

WELLS FARGO BANK NA

Employer

**CASE NO. 22IWDUI0039
IWD APPEAL NO. 21A-UI-18950**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 6/20/2021
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Dawn Nail filed a timely appeal from an August 25, 2021, unemployment insurance decision that denied unemployment benefits based on “repeated tardies after being warned.” A telephone hearing was held October 19, 2021. The parties were properly notified of the hearing. The claimant participated and was self-represented. Neither the employer nor a representative for the employer called in for the hearing.

Official notice was taken of the documents in the administrative file. Neither party submitted exhibits.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Dawn Nail (Nail) was employed as a full-time loan servicing specialist 4 at Wells Fargo. Her first day of employment at Wells Fargo was September 22, 2020. She was terminated by supervisor

Rachel Ripperton (Ripperton) on April 25, 2021. Ripperton terminated Nail for arriving at work 10 minutes late on April 25. Nail had been considered tardy seven times in 10 months and had received one verbal warning and one written warning. Company policy required an employee to be terminated after receiving a written warning. After Ripperton terminated Nail, she said Nail might be eligible for rehire. (Nail testimony.)

Nail did not clock in at the beginning of each work day, and her tardies were based on Ripperton's observations. Wells Fargo requires employees in Nail's office to pass through a temperature check every day. The machine used to check employee temperatures occasionally malfunctioned and required employees to wait for a temperature check before entering the building. Nail was considered tardy when she arrived at her desk one minute after her 8:30 a.m. start time, and she was occasionally late because of delays due to COVID temperature checks. Nail is not responsible for opening/initiating any specific tasks at the start of her workday, and her specific work times do not affect others at the company. Nail was 10 minutes late on the day Ripperton terminated her employment. However, Nail said she had permission to flex her time on April 25, and she was not tardy. Nail did not have any paperwork related to her termination because she did not have access to the Wells Fargo computer system after her employment was terminated. (Nail testimony.)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 25, 2021, unemployment insurance decision that found Nail ineligible for benefits is reversed.

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:

Iowa Administrative Code rule 871-24.32(1)(a) provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitute 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct, and the employer in this appeal – Wells Fargo – did not appear at the hearing. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

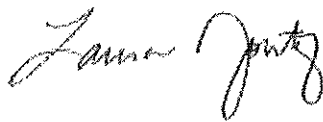
Nail provided credible testimony that her tardiness ranged from one minute late to work to ten minutes late to work. She attributed some of these incidents to delays and/or malfunctions in Wells Fargo's temperature check process. Nail added her supervisor had to terminate her employment because of workplace policy, but her supervisor told Nail she was eligible for rehire following her termination. Finally, Nail testified she was not tardy on April 25 because she had been allowed to flex her time on that day. Wells Fargo did not provide any testimony or exhibits. Absences can rise to the level of misconduct if the absences are both excessive and unexcused. Absenteeism includes tardiness, or limited absences. See *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984). To justify benefit disqualification, the final incident must rise to the level of misconduct. Iowa Admin. Code r. 871-24.32(8).

I find Wells Fargo failed to meet the required burden of proof required to disqualify Nail from receiving unemployment benefits. I find the final incident resulting in Nail's termination did not rise

to the level of misconduct because Nail had received permission to flex her time on April 25. Therefore, Nail did not commit misconduct and benefits shall be allowed, provided she is otherwise eligible.

DECISION:

The August 25, 2021, unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Laura Jontz
Administrative Law Judge

October 20, 2021

Decision Dated and Mailed

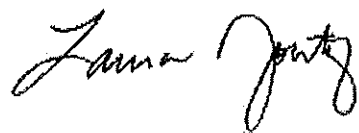
CC: Dawn Nail, Claimant (by first class mail)
Wells Fargo Bank NA., Employer (by first class mail)
Karen Holett, IWD (by email)
Joni Benson, IWD (by AEDMS)

Case Title: NAIL V. WELLS FARGO BANK NA

Case Number: 22IWDUI0039

Type: Order

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Laura Jontz", written in a cursive style.

Laura Jontz, Administrative Law Judge