

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY L NEVINS**  
Claimant

**APPEAL NO. 10A-UI-16958-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK**  
Employer

**OC: 11/14/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Kelly L. Nevins filed a timely appeal from an unemployment insurance decision dated December 7, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held January 26, 2011 with Loan Servicing Manager Tammie Cook testifying on behalf of the employer, Wells Fargo Bank, which was represented by Sarod Stevens of Barnett Associates. Ms. Nevins did not provide a telephone number at which she could be contacted.

**ISSUE:**

Was the claimant discharged for misconduct?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kelly L. Nevins was employed by Wells Fargo Bank from January 11, 2010 until she was discharged November 15, 2010. She last worked as a loan servicing specialist. She was discharged for poor attendance.

The final incident leading to discharge occurred on November 15, 2010. Ms. Nevins was over an hour late reporting for work because she could not find her car keys. She had been absent on eight previous occasions during her employment. She had received verbal warnings from her supervisor, Tammie Cook, in February, May and August. She received a final written warning on September 9, 2010 advising her that further absences could lead to her discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to illness may be excusable under some circumstances. See 871 IAC 24.32(7). There is no evidence in this record indicating that any of the absences were due to illness. The administrative law judge concludes that the evidence establishes excessive unexcused absenteeism. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated December 7, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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