

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANESSA M RODRIGUEZ
Claimant

APPEAL NO. 07A-UI-09978-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

**OC: 09/16/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Vanessa Rodriguez (claimant) appealed a representative's October 18, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Wells Fargo Bank (employer) for repeated tardiness in reporting for work after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 14, 2007. The claimant participated personally. The employer participated by Greg Smith, Customer Service Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 16, 1997, as a full-time customer service representative. The claimant received a handbook outlining the employer's attendance policy. The employer's policy states: "The ninth day of tardiness within a rolling 12-month period is considered excessive and will result in corrective action, up to and including termination."

The claimant was tardy on October 23, 2006, and April 26, May 7, June 8, July 6, and July 9, 2007. The employer issued the claimant a verbal warning for tardiness. The claimant was tardy again on August 3 and 7, 2007. The employer issued the claimant a written warning for tardiness and was told that further infractions would result in termination from employment.

On September 13, 2007, the employer had a one-on-one discussion with the employer. The claimant asked about her attendance and when the incidents of tardiness would expire. The employer informed the claimant of the dates of her past tardiness. The claimant said she was not going to make it. On September 14, 2007, the claimant overslept because she took a

sleeping aid. She was eight minutes late. The claimant asked if she would be terminated. The employer said it would check the time of her arrival and let her know.

The claimant worked on Saturday, September 15, 2007. On September 17, 2007, the employer terminated the claimant for excessive tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

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

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences would result in termination of employment and that 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 representative's October 18, 2007 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw