

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NASHARI N WHITE**  
Claimant

**APPEAL NO: 12A-UI-13642-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 10/21/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Nashari N. White (claimant) appealed a representative's November 9, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wells Fargo Bank, N.A. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on December 6, 2012. The claimant participated in the hearing. Maxine Piper of Barnett Associates appeared by phone on the employer's behalf and presented testimony from an in-person witness, Justin Peebles. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on or about July 14, 2010. She worked full time as home preservation specialist in the employer's Des Moines, Iowa home mortgage business into February 2012; as of February 10, 2012, at the claimant's request, she went to a part-time position, working about 22 to 24 hours per week. Her last day of work was October 22, 2012. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The claimant's schedule normally required her to work on Saturdays. The claimant had difficulties working on Saturdays due to childcare issues. The claimant had been requesting off on Saturdays, but as of about May 2012 the employer informed the claimant that for fairness she would still be required to work on Saturdays. If the employer was sufficiently staffed and other people had not requested to be off, the claimant was sometimes still allowed to be off or to leave early on Saturdays.

The employer's policy provides for a final notice if an employee incurs eight occurrences. The employer gave her a final warning on October 18, 2012. Most of the claimant's occurrences, including several instances of leaving early on Saturdays, were due to childcare issues.

On Saturday, October 20 the claimant left about two hours early due to childcare issues. She told a supervisor that she was leaving, but the employer did not consider the occurrence to have been approved. Because of this additional occurrence after the final warning, the employer discharged the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Occurrences due to issues that are of purely personal responsibility, specifically including reliable childcare, are not excusable. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984); *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant's final occurrence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's November 9, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 22, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

NOTE: If there should be further review, the administrative law judge observes that there is an underlying issue of whether the claimant is able and available for work on the same basis as when her wage credits were accrued which has not been investigated and determined.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs