

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTEN M CHRISTENSON
Claimant

APPEAL NO. 08A-UI-01077-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 12-02-07 R: 02
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 22, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 14, 2008. The claimant did participate. The employer did participate through Debra Mincks, Collection Supervisor II. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a collection agent full time beginning September 12, 2005 through December 3, 2007 when she was told she was fired due to absenteeism.

The claimant was off work beginning June 30, 2007 due to a non-work-related back injury. She applied for a leave of absence and one was granted to her through August 2, 2007. At some point while the claimant was gone from work, the employer was not receiving the medical documentation and certifications they needed from the claimant. The employer discovered sometime in September that the claimant was no longer on an approved leave of absence. During this time period the claimant was contacting the employer's leave management department where she was instructed to deal directly with Met Life regarding her short term disability. The claimant was also speaking to her Supervisor, Debra Mincks, on an almost weekly basis. The employer sent letters to the claimant requesting medical certification and other information from her and her physicians. The claimant provided those forms to her physician who was responsible for filling them out and faxing them into Met Life. It was the claimant's understanding that Met Life was sending the information on to the employer's leave management department.

The claimant was released to return to work on a part time basis beginning on November 26. She contacted Ms. Mincks to let her know she was able to return and was told not to return as Ms. Mincks would be out of the office on Monday. On the following Tuesday the claimant

contacted Ms. Mincks who told her that she was not in the system and could not return to work until Ms. Mincks worked with someone else in human resources to get her back in the system.

The claimant was called on December 3, 2007 and told that she was being discharged for excessive absenteeism since she had never completed paperwork to the employer's specifications to justify her leave of absence.

Prior to her discharge the claimant had never been warned that her failure to remedy any paperwork problems could result in her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was entitled to fair warning that the employer was no longer going to tolerate her performance and conduct, that is her failure to adequately complete the medical paperwork to support her leave of absence. Without fair warning, the claimant had no way of knowing that there were changes she needed to make in order to preserve her employment. It is clear that the claimant thought she was doing what was requested of her by sending in her paperwork to Met Life. The claimant had little to no control over the way her physician filled out the leave forms.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. This conduct was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The January 22, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs