

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACLYN M. SMITH
Claimant

APPEAL NO: 17A-UI-06957-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 06/18/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 7, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2017. The claimant participated in the hearing. The employer sent a fax prior to the hearing indicating it was not participating in the hearing.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time bankruptcy specialist for Wells Fargo Bank from May 14, 2008 to June 20, 2017. She was discharged for an incident of alleged tardiness June 8, 2017.

In April 2017, the claimant had three incidents of tardiness in a row due to having to wait for her alternate childcare provider to arrive to care for her ill child. The incidents of tardiness were fairly short in duration as the claimant estimated she was approximately six minutes later than allowed by the grace period. Around the beginning of May 2017 the employer issued the claimant a written warning for tardiness.

On June 8, 2017, the claimant arrived at 8:36 a.m. for her 8:30 a.m. shift. Her child was ill and she was waiting for her alternate childcare to arrive at her home. On June 20, 2017, the employer notified the claimant it was terminating her employment for tardiness.

The employer's disciplinary policy provides for a final written warning before termination occurs and the written warning from May 2017 also referenced a final written warning but the claimant did not receive one. Additionally, the employer's policy states there is a five or ten minute grace period to be determined by each department. The claimant had several managers during her tenure with the employer in the bankruptcy department. The two managers previous to her last manager both stated the grace period was ten minutes. The last manager never mentioned the

grace period or whether he would enforce the five minute grace period or the ten minute grace period.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 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 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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant accumulated four incidents of tardiness between April and June 2017 and received a written warning for her tardiness in May 2017, she did not receive a final written warning as the employer's disciplinary policy provided. Furthermore, the last time the claimant was notified about what her department's grace period was she was told it was ten minutes. Her last incident of tardiness was six minutes in duration which was within the ten minute grace period. Finally, the employer waited 12 days between the final incident and notifying the claimant of the termination which takes the final incident out of the definition of a current act of misconduct.

Under these circumstances, the administrative law judge finds the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The July 7, 2017, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn