

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-06314-ET
OC: 05-21-06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 13, 2006, 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 5, 2006. The claimant participated in the hearing with Attorney John Brown. Rick Kephart, Customer Service Supervisor, participated in the hearing on behalf of the employer. Claimant's Exhibit's One through Twenty and Employer's Exhibits A and B were admitted into evidence.

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 Customer Service Representative 4 for Wells Fargo from November 5, 2001 to May 25, 2006. The claimant was suffering from depression, anxiety and bi-polar disease and was absent December 27, January 9 through January 24, January 26 through February 4, February 9, and February 23, 2006, due to properly reported illness. He believed those absences would be covered by FMLA but was notified in a February 21, 2006, verbal warning that he had exhausted his FMLA January 6, 2006, and consequently those absences would count against his attendance. The claimant was on short-term disability from February 28 through April 14, 2006. On May 25, 2006, the claimant left for lunch at 4:00 p.m. and expected to return by 5:00 p.m. but experienced car problems. He called Supervisor Rick Kephart at 4:56 p.m. and 4:59 p.m. and left voice mail messages before returning to the building at 5:50 p.m. (Claimant's Exhibit One and Employer's Exhibit B). He logged onto the phone system and took two to three calls before Mr. Kephart called him into the office and terminated his employment. The claimant was told if he had been there by 5:59 p.m. his absence would have been an incident of tardiness rather than a full occurrence and he would not have lost his job.

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:

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's absences, with the exception of May 25, 2006, were due to properly reported illness and cannot be counted against him for purposes of unemployment insurance benefits. The May 25, 2006, absence was due to car trouble and the evidence establishes the claimant was back in the building and at work by 6:00 p.m. Even if he did not arrive before 6:00 p.m., however, his absence was an isolated incident of tardiness, and one unexcused absence does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 13, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw