

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

ANA F YBARRA-ROJAS
816 W 2ND ST
MADRID IA 50156

WELLS FARGO BANK
TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-05442-AT
OC: 05/01/05 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

STATEMENT OF THE CASE:

Ana F. Ybarra-Rojas filed a timely appeal from an unemployment insurance decision dated May 17, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held June 14, 2005 with Ms. Ybarra-Rojas participating. Production Supervisor Brandon Martin participated for the employer, Wells Fargo Bank.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ana F. Ybarra-Rojas was employed by Wells Fargo

Bank from October 4, 2004 through May 2, 2005, last working as a mortgage loan specialist. She was discharged because of poor attendance. The final incident leading to her discharge occurred on April 29, 2005. She was absent on that day because she had to make arrangements for having her cat put to sleep. All previous absences were due to the final illness and death of grandmother. Each of these absences was properly reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Ms. Ybarra-Rojas was discharged for misconduct in connection with her employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code section 96.6-2. Although excessive unexcused absenteeism constitutes misconduct, absence due to illness or other excusable reasons properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350

N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). A single unexcused absence is insufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

Reviewing the evidence in light of these principles of law, the administrative law judge concludes that the evidence establishes a single unexcused absence, the final incident leading to the discharge. Since the record establishes only one unexcused absence, excessive unexcused absenteeism has not been established. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 17, 2005, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjw/pjs