

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY N HUNT

Claimant

APPEAL NO: 15A-UI-08010-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 06/21/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Stacey N. Hunt (claimant) appealed a representative's July 10, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Wells Fargo Bank, N.A. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2015. The claimant participated in the hearing and presented testimony from one other witness, Kevin Hunt. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Bureau indicating that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 27, 2014. She worked full time as a loan adjuster at the employer's West Des Moines, Iowa home equity center. Her last day of work was June 24, 2015. The employer discharged her on that date. The reason asserted for the discharge was tardiness.

The claimant has been suffering from a medical condition involving chronic lower back pain and swelling and pain in her legs and feet. She had been undergoing testing, but as of the date of the hearing the condition has as yet not been diagnosed. However, for some months prior to June 24 she had been prescribed strong medication for the pain; she had advised her supervisors of the general ongoing issues.

The claimant had six tardies prior to May 2015, all but one attributable to the health issues she had been experiencing, despite the fact that she normally awoke around 5:30 a.m. to be able to leave for work around 7:30 a.m. to be at work by 8:30 a.m. The tardy that was not due to the health issues had occurred in November 2014 and was due to a snowstorm.

On June 24 when the employer discharged the claimant, it asserted that the claimant had been tardy on May 21 and that it had not been due to the medical issues. The claimant denied that she had been tardy on May 21. There could have been an earlier date where she might have been tardy where her alarm had not gone off and she had not awoken until about 6:30 a.m., and then due to her health condition had not been able to complete her preparations to leave for work until after 7:30 a.m. The claimant had not been advised in May that there was any incident for which potential discipline was pending.

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). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is excessive tardiness. Excessive unexcused absences can constitute misconduct, and tardies are treated as absences for purposes of unemployment insurance law. Rule 871 IAC 24.32(7); *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). First, in this case there is no current act of misconduct as required to establish work-connected misconduct. Rule 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The most recent incident in question occurred nearly a month prior to the employer's discharge of the claimant.

Further, attendance issues due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Rule 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). The final occurrence in this case was due to a properly reported medical condition. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 10, 2015 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs