

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATICIA M HOVE

Claimant

APPEAL NO: 11A-UI-07967-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 05/15/11

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 8, 2011 determination (reference 01) that held her eligible to receive benefits and the employer's account was subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Mary Otu represented the employer. Brandon Seyer testified on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2010. She worked as a part-time loan servicing specialist. The employer's attendance policy informs employees that during a 12-month period if they accumulate 9 attendance occurrences or have 12 days of unscheduled absences, they will be terminated. (Employer Exhibit Two.)

After the claimant received a verbal warning for attendance issues, she received her final written warning on March 28, 2011. The claimant understood that if she had any more unscheduled absences she could be discharged.

The claimant was absent on April 18 when she had a doctor's appointment. The claimant received FMLA for April 21 through May 8. After her surgery, the claimant returned to work on May 2. The claimant became ill at work on May 7. The employer called an ambulance to take her to the emergency room. The claimant reported to work on May 10. Shortly after the claimant arrived at work on May 10 she indicated she had the same symptoms as she had on May 7. The employer called paramedics to assess the claimant. The claimant declined taking an ambulance to the emergency room. Instead her grandparents came and took her to the emergency room. The claimant declined the ambulance because of the cost.

The emergency room doctor told the claimant to stay home from the next day and see her personal physician. The claimant saw her personal physician on May 12. Between the emergency room doctor and her personal doctor she learned why she had some medical issues after her surgery.

Seyer talked to the claimant about pursuing FMLA to cover the May 10 and 11 absences. The claimant contacted the department in charge of FMLA and was told that since she had not and was not going to be absent for seven days or more, she would not receive FMLA and could not even apply for FMLA. The claimant left Seyer a message informing him that she could not apply for FMLA because she would not be absent for seven days or more.

The employer discharged the claimant on May 17 because she had too many unscheduled absences and violated the employer's attendance policy with her May 10 and 11 absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

After the claimant received her final written warning on March 28, she knew her job was in jeopardy because of attendance issues. The absences the claimant had after March 28 occurred because of health issues the claimant experienced. Since a third party administers the employer's FMLA, the claimant had to rely on information a representative of that company gave her. Specifically, a third party representative informed the claimant she not eligible for FMLA for her May 10 and 11 absences because she would not be absent for seven or more days. Without FMLA, the claimant's May 10 and 11 absences were unexcused which in turn meant she had too many attendance occurrences and unscheduled days of absence. In accordance with the employer's policy, the claimant violated this policy. The employer discharged the claimant because she violated the employer's attendance policy. Even though she violated the employer's policy, she did not commit work-connected misconduct. The claimant properly notified the employer when she was unable to work and as a result of health issues the claimant was unable to work the days she missed after March 28. The claimant did not commit work-connected misconduct. As of May 15, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 8, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, attendance issues, that do not constitute work-connected misconduct. As of May 15, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs