

**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**

**GREGORIA VALDIVIA  
701 – 3<sup>RD</sup> AVE  
SOUTH SIOUX CITY NE 68776**

**WELLS DAIRY INC  
PO BOX 1310  
LE MARS IA 51031-1310**

**Appeal Number: 06A-UI-05822-CT  
OC: 05/07/06 R: 01  
Claimant: Respondent (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, 4<sup>th</sup> 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 for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Wells Dairy, Inc., filed an appeal from a representative's decision dated May 24, 2006, reference 01, which held that no disqualification would be imposed regarding Gregoria Valdivia's separation from employment. After due notice was issued, a hearing was held by telephone on June 22, 2006. Ms. Valdivia participated personally. The employer participated by Alfredo Moreno, Human Resources Generalist. Exhibits One and Two were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Valdivia was employed by Wells Dairy, Inc. from May 31, 2005 until May 7, 2006 as a full-time production technician. She was discharged because of her attendance. Employees may accumulate up to 180 attendance points. The employee is subject to discharge when the point balance reaches zero. On or about April 29, 2006, Ms. Valdivia was notified that she only had 30 points remaining.

Ms. Valdivia was absent on April 30 because her car broke down on the way to work. She had repairs made the same day. She was not scheduled to work on May 1 and 2. Ms. Valdivia was on her way to work on May 3 when her vehicle again stalled, causing her to be absent. She was absent again on May 4 and 5 because her car had not been repaired. The employer did not deduct points for May 4. The absences beginning April 30 caused Ms. Valdivia to lose her final 30 attendance points. When she called on May 7, she was advised that she no longer had employment because her point balance had reached zero. Attendance was the sole reason for the separation.

Ms. Valdivia has received a total of \$2,786.00 in job insurance benefits since filing her claim effective May 7, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Valdivia was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Absences due to matters of purely personal responsibility, such as transportation, are not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Valdivia had four consecutive absences because she did not have transportation to work. This might be a different case if the four absences had been sporadic. However, four consecutive unexcused absences constitute a substantial disregard of the standards the employer had the right to expect. The administrative law judge appreciates that Ms. Valdivia did not intend to have transportation problems. However, the fact remains that she was responsible for her own transportation to and from work. Ms. Valdivia was on notice that her attendance was jeopardizing her continued employment. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Valdivia has received job insurance benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 24, 2006, reference 01, is hereby reversed. Ms. Valdivia was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Valdivia has been overpaid \$2,786.00 in job insurance benefits.

cfc/pjs