

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA J BOYD
Claimant

APPEAL NO. 10A-UI-09828-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 05/30/10
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 1, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 23, 2010. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Linda Boyd.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a collector for Wells Fargo Financial. She was a full-time employee and had worked for the employer since September 2006. She was terminated on June 2, 2010, for what the employer believed was a no call/no show on May 20, 2010.

The claimant had been on Family Medical Leave Act (FMLA) leave for a personal medical condition. She had an appointment with a specialist that she had waited for two months to obtain. The appointment was on May 20, 2010. On May 19, 2010, the claimant sent an email to her supervisor to notify the supervisor that she had this appointment on May 20, 2010. The email was sent at 7:00 a.m. on May 19, 2010. The claimant notified her supervisor of her absence on May 20, 2010, in accordance with the employer's written policies. On June 2, 2010, the claimant was called into her supervisor's office and notified that she was being terminated.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The claimant properly notified her employer that she had to be absent to attend a doctor's appointment. The appointment was in connection with a medical condition for which the claimant had previously obtained FMLA leave. The claimant did not come to work on May 20, 2010, but she was not a no call/no show. The absence is an excused absence under Iowa law and cannot be the basis for a disqualification as there is no current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 1, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs