

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M WARNOCK
Claimant

APPEAL NO. 13A-UI-05596-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

OC: 04/14/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Teresa Warnock (claimant) appealed a representative's May 3, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Wells Fargo Bank (employer) for excessive unexcused absenteeism and tardiness after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 17, 2013. The claimant participated personally. The employer was represented by John O'Fallon, Hearings Representative, and participated by Tamara Crall, Bankruptcy Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 12, 2002, as a full-time bankruptcy specialist 2. The claimant received the employer's handbook online. The employer issued the new attendance policy through an e-mail at the beginning of January 2013. The claimant properly reported thirteen absences and/or tardiness due to a medical condition. The employer notified the claimant that further infractions could result in termination from employment. The claimant properly reported two more absences and/or tardiness due to a medical condition. The employer notified the claimant that further infractions could result in termination from employment.

On April 15, 2013, the claimant requested paid time off for April 16, 2013. On April 16, 2013, the claimant called the employer at approximately 6:30 a.m. to see if her request was approved and left a message. The employer did not return her call. The claimant called the employer at 8:30 a.m. and asked if the employer had approved her request as she was supposed to be at work at 8:30 a.m. The employer told the claimant she was not ready to discuss the claimant's request at that time. At 8:50 a.m. the employer called the claimant back and denied her request. This caused the claimant to be ninety minutes tardy for work. On April 17, 2013, the employer terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. In this case all of the claimant's absences were due to a medical condition and properly reported except for the final incident. The claimant does not have a history of unexcused absences. The final absence was caused by the employer. If the employer had responded to the claimant swiftly, the claimant could have arrived at work on time. The employer did not provide sufficient evidence of job-related misconduct. Benefits are allowed.

DECISION:

The representative's May 3, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css