

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES W FELDT
Claimant

APPEAL NO: 12A-UI-04442-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/18/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 9, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the hearing. William Feldt observed the hearing. On May 11, the employer's representative informed the Appeals Section that the employer would not be participating in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in October 2011. He worked full time as a customer service representative.

The employer gave the claimant a written warning in early February for attendance issues. The employer informed the claimant that if his attendance did not improve, he could be discharged. The claimant was absent two or three days because of a dental issue. He then was absent because of problems he had with his supervisor. Based on the claimant's training, he believed his supervisor failed to do parts of her job, which created undue stress for the claimant. In mid-February, the claimant went to his supervisor's supervisor and asked to be transferred to another supervisor. The claimant's supervisor was difficult to work with and she indicated that she did not even know some basic information that the claimant had received in training the employer gave him. Her lack of knowledge, in addition to being difficult to work with, created a stressful and tense working environment. The tension and stress affected the claimant to the point he could not go to work some days.

On March 11, the claimant had an irate customer on a phone call. When the claimant asked his supervisor to take over the escalated call with this customer, she refused. It was her job to take

these calls. The claimant was left to handle this customer. The claimant was upset when his supervisor refused to do her job.

After his supervisor refused to take a March 11 call, the claimant could not report to work on March 12. He properly notified the employer he was unable to work on March 12. He was not scheduled to work March 13. On March 14, the claimant called to report he was unable to work. On March 15, the claimant talked a human resource representative and explained the situation with his supervisor. He told the representative that he had talked to his supervisor's superior and asked to be transferred to another supervisor. The claimant told the human resource representative that he could not work with his current supervisor and why he could not work with her. He also explained that he had some absences because of the stress and tension she created. The claimant again asked to be transferred to another supervisor. The claimant was advised to report to work the next day.

The evening of March 15, the claimant again talked to his supervisor's supervisor. The claimant again explained the issues he had with his supervisor and how she had created a stressful and tense work environment. When the claimant reported to work on March 16, the employer discharged him for excessive absenteeism. The claimant then learned he had been transferred to another supervisor the day before.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The facts establish the claimant notified the employer when he was unable to work. Since mid-February, the claimant took reasonable steps to resolve issues he had with a supervisor, but nothing happened until March 15. Since the employer did not participate at the hearing, the facts do not establish if the claimant violated the employer's attendance policy. Even if according to the employer's attendance he was absent too many times, he took reasonable steps before March 16 in attempt to resolve problems he had with his supervisor that affected his attendance. Based on the evidence presented during the hearing, the employer did not establish that the claimant committed work-connected misconduct. Therefore, as of March 18, 2012, the claimant is qualified to receive benefits.

The employer is not one for the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's April 9, 2012 determination (reference 01) is reversed. The employer may have discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of March 18, 2012, the claimant is

qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css