

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AUDREY M PINCKNEY**  
Claimant

**APPEAL NO. 11A-UI-11888-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 08-07-11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 30, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 4, 2011. The claimant did participate. The employer not did participate as Jessica Ware, did not answer the telephone when called to begin the hearing. Mr. Kelley Landolfi of Barnett Associates opted not to participate in the hearing when Ms. Ware did not answer the telephone.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a collector full time beginning August 4, 2008 through August 8, 2011 when she was discharged. The claimant was on her way to work on August 4, 2011 at 6:40 a.m. when she was called by paramedics to alert her that her aunt had suffered a heart attack and was being transported to the hospital. The claimant was raised by her aunt and was one of her only living relatives. She called the employer to tell them what had occurred and that she would not be into work. The three calls she made to the employer went unanswered as did her three voice mail messages. Her aunt died at the hospital later that day. The claimant notified her employer and asked for bereavement leave for August 5 as she was the person responsible for making funeral arrangements. The employer discharged the claimant for missing work on August 4. When the claimant arrived at work on August 8 she was told she was discharged for excessive unexcused absences.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. An employee missing work to deal with an immediate family member who is hospitalized and dies that same day is not a volitional absence. The claimant's absences for August 4 and 5 were excused. Since her final absences were excused no misconduct is established and benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The August 30, 2011 (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css