

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

TEREASA A JEFFERSON  
1600 ANDREWS DR  
DES MOINES IA 50327

WELLS FARGO BANK  
c/o TALX EMPLOYER SERVICES  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-11955-CT  
OC: 10/23/05 R: 02  
Claimant: Appellant (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tereasa Jefferson filed an appeal from a representative's decision dated November 14, 2005, reference 01, which denied benefits based on her separation from Wells Fargo Bank. After due notice was issued, a hearing was held by telephone on December 13, 2005. Ms. Jefferson participated personally. The employer participated by Gretchen Rickert, Collections Manager, and Vicky Rhoades, Quality Assurance Analyst.

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. Jefferson began working for Wells Fargo Bank

on August 30, 2004 as a full-time collector. She was on medical leave beginning August 13 and returned to work on September 12, 2005. Ms. Jefferson called on September 13 to report that she would be absent. She called after the start of her shift on September 14 to report that she would be back to work on September 15. On the afternoon of September 14, she called and indicated she would return to work on September 19. On the afternoon of September 19, Ms. Jefferson called and advised the employer that she did not know when she would be returning and that she anticipated being on short-term disability or FMLA.

On September 29, the employer received a doctor's statement indicating that Ms. Jefferson would be on medical leave through October 21. On October 3, she was sent the paperwork needed to apply for FMLA. She received the forms on October 8 and gave them to her doctor on October 12. She knew the forms were to be returned to the employer within 15 days of October 3. On October 3, she called the employer and indicated she felt she would be back on October 21. Ms. Jefferson called on October 17 to say she would be back on October 18. When she returned on October 18, she had a doctor's statement releasing her to work October 17.

Ms. Jefferson was granted October 19 off. On that same date, the employer mailed her a notice that FMLA was denied because medical certification of the need to be absent had not been received. She called on October 20 to say she would be absent due to a death in the family and would be back at work on October 26. Because it was the death of her brother, she was entitled to five days of bereavement leave under the employer's policy. On October 24, she called to indicate she would not be back until October 27. Ms. Jefferson also received the employer's October 19 letter on October 24. She received the forms from her doctor's office and mailed them to the employer on October 24. When Ms. Jefferson returned to work on October 27, she was discharged because there was no medical certification of her need to be absent.

Ms. Jefferson had been informally warned about her attendance in April and August of 2005. The last infraction before she began medical leave was on August 3 when she was two hours late. She was placed on a formal warning on September 13 but was not aware of this fact until October 27 because she had been away from work after September 12. Her need for leave time after September 12 was due to panic attacks and the need to change her medications. She receives treatment from Dr. Easton at Mercy.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Jefferson 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 he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

The series of absences that caused Ms. Jefferson's discharge began on or about September 13, 2005. The absences caused her discharge because there was no certification that she needed to be absent. Because the absences were not covered by short-term disability or FMLA, the employer counted them against her attendance. The administrative law judge notes that five of the days Ms. Jefferson was gone was for bereavement after the death of her

brother. The employer received a statement on September 29 on Mercy letterhead or prescription pad indicating that Ms. Jefferson would need to be absent through October 21. She could not return at that point because of the bereavement leave, which began on October 20. The five workdays of bereavement would mean she was to return to work on October 27.

Inasmuch as Ms. Jefferson's absences after September 12 were supported by the doctor's statement of September 29, the administrative law judge concludes that the absences are excused. The absences were due to a medical condition and, Ms. Jefferson kept the employer apprised as to when she anticipated returning to work. The fact that her doctor did not timely submit a certification for short-term disability or FMLA does not prevent the absences from being excused within the meaning of the Iowa Employment Security Law. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that disqualifying misconduct has not been established and benefits are allowed.

DECISION:

The representative's decision dated November 14, 2005, reference 01, is hereby reversed. Ms. Jefferson was discharged by Wells Fargo Bank but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs