

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL E SHORT**  
Claimant

**APPEAL NO. 13A-UI-08132-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 06/09/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 5, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Judy Berry participated in the hearing on behalf of the employer with a witness, Duane Lakose. Exhibits 1 through 3 were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a phone banker taking inbound calls from customers from April 28, 2008, to June 7, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they had 12 or more attendance incidents within a six-month period.

In 2013, the claimant was late for work January 11, February 8, February 13, February 18, February 26, March 18, March 25, April 22, and June 7. He was absent January 22, January 23, January 29, March 4, March 5, March 12, April 3, April 5, and May 24. He was assessed 13.30 attendance incidents for his repeated absences and tardiness.

He missed work due to personal illness and his children's illness. Some of his tardiness was due to having problems with getting his children up and ready for school. The claimant failed to call in properly to report his absence due to illness on May 24 and was at least 30 minutes late on June 7, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7). The claimant was repeatedly late and absent. While some absences were due to illness and properly reported, the final absence was not properly reported and was followed by being late for work without a legitimate excuse. Work-connected misconduct has been shown in this case.

**DECISION:**

The unemployment insurance decision dated July 5, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs