

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE A HOLTANE
Claimant

APPEAL NO. 14A-UI-00056-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 12/08/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 24, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, an in-person hearing was held on February 3, 2014 at Des Moines, Iowa. Claimant participated. Employer did not participate. Claimant's exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a research and remediation representative beginning on January 30, 2012 through December 9, 2013 when she was discharged. The claimant was discharged for excessive unexcused absenteeism. The claimant missed work and was late to work due to lack of childcare for her two five-year-old boys. In mid-November the claimant asked the employer to change her start time from 6:30 a.m. to 8:30 a.m. and to let her work a reduced workweek of six hours per day or 30 hours per week. Her request was granted the first week of December 2013. She missed work on December 3 to attend her children's IEP. The claimant was given a final written warning on December 6 that put her on notice that any further unexcused absences or incidents of tardiness could lead to her discharge. The claimant was late to work by ten minutes the next working day on December 9 due to her inability to drop her children off at school any earlier than 7:50 a.m. and slow road conditions due to weather. The claimant missed work on September 2, 12, 13 and November 14, and 20 due to no childcare.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 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). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The employer attempted to accommodate the claimant's lack of child care by changing her schedule. The claimant's absences due to lack of child care are not considered excused and under these circumstances do constitute job-connected misconduct.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 24, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css