

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK PROPPS II

Claimant

APPEAL NO: 08A-UI-06251-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 06/08/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Frank Propps II (claimant) appealed a representative's July 3, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Wells Fargo Bank NA (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2008. The claimant participated in the hearing. Michael Johnson, the customer service supervisor, and Mark Grittmann appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 29, 2002. The claimant worked as a full-time customer service representative.

The claimant encountered legal difficulties in 2008. In an attempt to resolve his legal issues, the claimant asked the employer for time off, April 14 through 29. The employer agreed and allowed the claimant to use vacation time and some unpaid time off.

On April 28, 2008, the claimant learned the court was going to require him to spend some time in jail. Prior to April 28, the claimant hoped he would avoid jail time. The claimant asked his mother to contact the employer and let them know he would be incarcerated until June 6. Although the claimant understood his mother had contacted the employer, the employer did not receive such a call from the claimant's mother.

When the claimant did not report to work on April 30, 2008, Johnson called several contact numbers for the claimant. He was unable to successfully talk to the claimant. The employer's

policy informs employees that if they do not call or report to work for three consecutive days, the employer considers the employee to have voluntarily quit employment.

The claimant did not call or report to work on April 30, May 1 or May 2. On May 2, the employer sent the claimant a letter informing him that the employer no longer considered him an employee because he had abandoned his job by failing to report to work for three consecutive days, April 30 through May 2. Although Johnson asked the claimant to contact him if there were any extenuating circumstances, the claimant did not contact the employer again.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a.

The law presumes a claimant has voluntarily quit employment without good cause if he leaves employment because he is incarcerated. 871 IAC 24.25((16). Even though the law presumes a claimant voluntarily quits, the facts in this case do not establish that the claimant had any intention of quitting his employment. The employer initiated the employment separation and ended the claimant's employment on May 2, 2008. The employer discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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).

Since the claimant worked for the employer since 2002, he knew or should have known his employment would end if he did not call or report to work for three consecutive days. The claimant's previous conduct resulted in his incarceration. After the claimant learned he would be incarcerated until June 6, he failed to take reasonable steps to make sure the employer knew the claimant was in jail and request an extension of time off without pay. When the claimant did not call or report to work after April 29, the employer discharged him for excessive unexcused absenteeism. For unemployment insurance purposes, the employer discharged him for disqualifying reasons. As of June 8, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's July 3, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 8, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs