

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARIANA A PHILLIPS

Claimant

APPEAL NO: 10A-UI-15266-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 10/03/10

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 26, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Shaun Lampel represented the employer. Lisa Jones and Scott Holt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on in January 2008. Prior to her employment separation, the claimant worked as a full-time loan adjuster specialist. In April 2010, the employer implemented a new attendance policy. The claimant received a copy of this policy. This policy informed employees that during a rolling six-month time frame, employees could not have more than four unscheduled absences. Also, the policy stated employees could not have more than four tardies during a rolling 60-day time frame. If an employee violated the policy, the employer started a disciplinary process. The employer gave the claimant a formal warning for excessive absenteeism in June 2010. The claimant was on the warning from June 9 through September 9, 2010.

After the employer gave the claimant the June formal warning, she was late for work on July 26, August 25 and August 30. Initially, the employer considered the claimant late on August 23, but later changed this to an absence because she was more than two hours late. The claimant's child was ill September 13 through 17. The claimant is a single mother. Even though the claimant's child was still ill on September 17, the employer counted the September 17 absence as another occurrence because the claimant had told the employer the day before she would be at work on September 17. When the claimant's mother was unable to care for her grandchild as the claimant thought she would, the claimant stayed home with her child on September 17.

On September 20, 2010, the employer gave the claimant another formal warning for excessive absences. After the claimant received this written warning, she understood her job was in jeopardy and she could be discharged if she had another attendance issue. On September 27, the claimant overslept when her alarm did not go off. When she woke up, the claimant notified the employer she would be late for work that day. The claimant was an hour late for work.

Even though September 27 was the first time the claimant overslept, the employer discharged her for continued attendance issues. The employer discharged the claimant on October 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer established justifiable business reasons for discharging the claimant. The claimant understood her job was in jeopardy after she received another formal warning on September 20, 2010. On September 27, the claimant did not intend to oversleep and be late for work. She inadvertently overslept when her alarm clock did not go off. As soon as the claimant woke up and realized she would be late, she notified the employer. The evidence does not establish that the claimant typically overslept. Her attendance issues were primarily due to either the claimant or her child being ill. The September 27 oversleeping incident does not rise to the level of a current act of work-connected misconduct. Therefore, as of October 3, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's October 26, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable reasons, but the claimant did not commit work-connected

misconduct. As of October 3, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs