

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANEEN WOODSON
Claimant

APPEAL NO: 06A-UI-10239-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 09-17-06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 12, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 6, 2006. The claimant participated in the hearing. Brenda Petersen, Supervisor; Karen Slater, Dispute Resolution Manager and Deb Puls, Dispute Resolution Site Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative III for Wells Fargo Bank from May 7, 2000 to September 20, 2006. In April 2006 the claimant moved from the Fraud Department to Customer Service. She started the training program but then stopped showing up. She did call in to report her absences but the employer did not know why she was absent. The claimant has custody of her nine-year-old grandson who suffers from ADHD. Her grandson was experiencing weight loss as a result of the medication he was on so his physician took him off medication which made him very difficult to handle. The claimant was often called at work to pick him up because the school felt he needed to go home. She tried to obtain FMLA but had not worked enough hours the previous year so she was not eligible but the employer allowed her to take a personal leave of absence beginning in April 2005. On July 25, 2006, the employer sent the claimant a letter stating she needed to return July 31, 2006, and she did so at that time. On August 31, 2006, the claimant was placed on an informal warning for absenteeism after accumulating absences March 9, 15, 16, April 21, August 12, 19 and 26, 2006. On September 7, 2006, she received a formal warning about her attendance and on September 9, 14, 15, 18, 19 and 20, 2006, the claimant called in and reported she would not be in but did not provide a reason for her absences. The claimant spoke to Supervisor Brenda Peterson September 13, 2006, and explained the situation with her grandson. She told her that his physician had changed his medication and he had to be monitored closely so someone had

to be with him. The employer repeated its offer of allowing the claimant to work 32 hours but the claimant declined because she needed the full-time salary. On September 15, 2006, the employer called the claimant and left a message stating if there were extenuating circumstances she needed to let the employer know but the claimant did not respond. The employer terminated her employment September 20, 2006, for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer has the burden of proving disqualifying misconduct. 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 substantial and 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). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did not qualify for FMLA because she had not worked enough hours during the previous 12 months, it appears her absences would have been covered had she qualified. The claimant did not have anyone else to consistently watch her grandson when he experienced problems when she was at work. The claimant's absences were properly reported and due to her grandson's illness and her absences were not unreasonable under the circumstances. Consequently, the administrative law judge concludes the claimant's absences do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 12, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs