

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEAKOL L GARDNER
Claimant

APPEAL NO: 11A-UI-11204-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 07/24/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 18, 2011 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 non disqualifying reasons. The claimant participated in the hearing. Kelley Landolphi represented the employer. Brenda Woods, a supervisor, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 in August 2009. The claimant understood the employer expected her to report to work and from breaks on time. The employer gives employees a six-minute grace period to report to work on time. Even with the grace period, the claimant reported to work late for a shift or when she came back from a break. The claimant received a number of warnings for on-going attendance issues.

On June 1, the claimant received a final written warning for attendance issues. This warning informed the claimant she no longer received a grace period and the next time she reported to work late she would be discharged.

After the claimant returned from her medical leave in July, she was late for work several times. The employer did not tell her that the human resource department would not discharge an employee if the employee was less than seven minutes late for work. On July 27, the claimant accidentally locked her keys in her car when she got to work. The claimant called her insurance company and learned a locksmith would go to her car and unlock it over the claimant's lunch hour. After the claimant learned the claimant would be late, she tried to make arrangements for another person to wait for the locksmith, but the locksmith would not allow the claimant to do this. The claimant worked until 6 p.m. and the locksmith did not work after 5 p.m. unless the

claimant wanted to pay the locksmith. If the locksmith unlocked the claimant's car before 6 p.m., the claimant did not have to pay the locksmith for unlocking her car.

When the locksmith got lost and did not get to the claimant's car as planned, the claimant knew her job was in jeopardy and talked to the employer. She asked if she could punch in and then punch out or go home. The employer denied this request and told her she could not be late for work. The claimant punched back in from lunch seven minutes late.

The employer discharged the claimant on July 29 because she was late for work after she received her final written attendance warning on June 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

After the claimant received the June 1, 2011 written warning, she understood her job was in jeopardy. Even though the employer told her on June 1 that she no longer received the six-minute grace period the employer gave other employees, the employer's human resource department would not allow the employer to discharge an employee if they were less than seven minutes late for work. On July 27 the claimant realized she could be late for work when the locksmith did not get to her car right away. The claimant talked to the employer about what she could do so she would not be terminated. The claimant offered to punch in and out when the locksmith came or she would leave for the rest of the day. The employer did not suggest anything the claimant could do to remain employed except get back from lunch on time. Since the locksmith required the claimant to be present when her car was unlocked, the claimant ended up being seven minutes late for work.

Under the facts of the case, the claimant did not intentionally fail to return from her lunch break on time. The claimant tried to get back from her lunch break on time, but was unable to do so because of factors beyond her control. The claimant established reasonable grounds for being seven minutes late for work on July 27, 2011. Therefore, as of July 24, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's August 18, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit a current act of work-connected misconduct. As of July 24, 2011, 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