

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON M MILLER
Claimant

APPEAL NO. 07A-UI-07783-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 07/15/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Aaron Miller, filed an appeal from a decision dated August 8, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 28, 2007. The claimant participated on his own behalf. The employer, Wells Fargo, participated by Supervisor Brenda Woods

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Aaron Miller was employed by Wells Fargo from October 3, 2005 until July 17, 2007, as a full-time customer service representative working 7:00 a.m. until 3:30 p.m. He received an informal written warning on May 18, 2007, when he had four occurrences of absenteeism since January 2007. Three absences were due to illness and one to personal injury sustained off the job. The warning advised him if he had another occurrence he would be on a formal written warning.

The claimant missed work on June 25, 2007, because he elected to stay home and pick up some storm damage which had occurred the night before. He could have done this after work, or skipped it altogether as there were other people living in the house with him who could have seen to the clean up. However, he chose not to go to work so he would not miss his college class in the evening. He was given a formal written warning on June 27, 2007, and it notified him if he missed any more work in the next 90 days, he was subject to discharge.

The claimant had notified Ms. Woods at the counseling in June that he was having some problems dealing with the death of his father, and the supervisor said she would “work with him” if he needed to go to counseling. She gave the claimant her personal cell phone number in case he needed to contact her during non work hours, but he left the number in his desk and did not take it home with him.

On July 16, 2007, the claimant was no-call/no-show to work. The policy is for employees to notify a supervisor of any absence before the start of the shift. Another supervisor called the claimant around 7:45 a.m. and left a message, which he returned a few minutes later and talked with Ms. Woods. He had overslept due to a power outage. He said he was going to be in but would first try to contact an employee assistance counseling center to make an appointment. Ms. Woods reminded him he needed to arrive within two hours of his start time or he would be considered absent and accrue another point, which would put his job in jeopardy.

Mr. Miller elected not to come in to work that day because he was playing "telephone tag" with the counseling center in an attempt to make an appointment. The center did not open until 1:00 p.m. and he was aware of this fairly early in the day, but still did not make any attempt to come in to work or to make his calls after his work ended at 3:30 p.m. This was another absence which put him at the discharge level. He was notified of the discharge by Ms. Woods on July 17, 2007.

REASONING AND CONCLUSIONS OF LAW:

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.

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 claimant had been advised his job was in jeopardy as a result of his absenteeism. Mr. Miller appears to have assumed that his absence on July 16, 2007, would not be counted against him because he was trying to make a counseling appointment. However, he had not requested the time off in advance and been approved for it, nor had he called Ms. Woods over the weekend to talk to her about being absent on Monday for this purpose, and he had not called to report his absence in a timely manner on July 16, 2007, due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984).

The record establishes the claimant took far too much for granted in matters of his attendance and not only did he not get permission in advance to be gone on July 16, 2007, to merely make an appointment, which he could not make prior to 1:00 p.m. in any event, but he did not call to report his absence on the day in question as required due to oversleeping. The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of August 8, 2007, reference 01, is affirmed. Aaron Miller is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs