

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE K HAEGE

Claimant

APPEAL NO. 07A-UI-03377-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

**OC: 03/04/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Janice Haege filed an appeal from a representative's decision dated March 22, 2007, reference 01, which denied benefits based on her separation from Wells Fargo Bank. After due notice was issued, a hearing was held on April 30, 2007 in Des Moines, Iowa. Ms. Haege participated personally. The employer participated by Denise Whittington, Manager of Private/Conventional Claims, and was represented by David Williams of TALX Corporation. Exhibits One through Eight were admitted on the employer's behalf. The administrative file was admitted as Division Exhibit I.

ISSUE:

At issue in this matter is whether Ms. Haege was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Haege was employed by Wells Fargo Bank from February 17, 2003 until February 22, 2007. She was employed full time as an operations processor. She was discharged because of repeated tardiness in reporting to work.

Ms. Haege received a written warning regarding her tardiness on August 12, 2005. She had been late on 15 occasions from July 5 through August 11, 2005. Because the tardiness continued, she was given another written warning on October 25, 2005. Ms. Haege was given a final written warning on October 6, 2006. She had been late on 30 occasions from April 6 through October 2, 2006. She was away from work on disability between April and August 7, 2006. Of the 30 occasions she was late, she misrepresented her arrival time on 18 occasions.

Employees input their arrival times into the computer. Their arrival time in the building is automatically recorded when they use their badge to access the building through any door from the outside. The employer compared Ms. Haege's computer entries with the report indicating the times she entered the building from the outside. The difference between her entries and the

door reports was usually approximately ten minutes. Ms. Haege was advised that further attendance infractions would result in additional discipline, up to and including termination of the employment.

Ms. Haege provided the employer with a letter from her doctor dated October 2, 2006. The letter indicated she was experiencing bowel disturbance due to medication and, therefore, might be late to work on occasion. The doctor estimated she would be taking the antibiotic for an additional week. The medication caused her to experience cramping to the extent that it delayed her ability to leave for work on time. Ms. Haege was late to work November 6, 7, and 8. The tardiness ranged from a few minutes to 12 minutes. She was late on one occasion in December and two occasions in January. Ms. Haege was over 15 minutes late on February 1, 2007. She was again notified that her tardiness was an issue during her performance evaluation on February 5, 2007. The decision to discharge was prompted by the fact that she was 17 minutes late on February 22.

Ms. Haege advised the employer that her tardiness of February 22 was due to the fact that her son was in town. She indicated during the hearing that she was late because she could not find a handicapped parking space. She never indicated to the employer that she had difficulty locating parking. All of the employer's handicapped parking spaces are located around the perimeter of the building itself. Ms. Haege was notified of her discharge on February 22. Tardiness was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work and is, therefore, assessed by the same criteria. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Ms. Haege's problems with tardiness dated back to June of 2005. She reported to work late 15 times after the June warning, resulting in another written warning in August of 2005. Ms. Haege was clearly on notice that her repeated tardiness was jeopardizing her continued employment with Wells Fargo Bank. In spite of the warnings, her pattern of tardiness resumed in April of 2006. She was late 12 times in April alone. Ms. Haege did not persuade the administrative law judge that the door report entries were inaccurate. Her tardiness in April ranged from 9 minutes to 25 minutes. Ms. Haege was away from work on disability between April 27 and August 7, 2006.

After her return from disability, Ms. Haege was late 5 times in August and 12 times in September. She presented documentation from her doctor that the side-effects of her medication might cause her to be late for work. However, this would cover only a period of two to three weeks when she was taking the antibiotic. According to her doctor, she would have been off the medication approximately one week after October 2, 2006. Therefore, the administrative law judge presumes that her tardiness beginning November 6 was not caused by the medication. Ms. Haege had 8 occasions of tardiness after she was no longer taking the medication.

Other than those occasions attributed to medication, the evidence did not establish any good cause for the remaining tardiness. Even if the administrative law judge were to exclude the ten tardies preceding October 2 on the theory that Ms. Haege was taking medication that effected her ability to get to work on time, she still had 20 occasions of tardiness beginning April 6 and ending September 8, 2006. She had an additional 8 occasions of tardiness beginning November 6, after she was off medication. During the time frame from April through October 2, Ms. Haege was off work on disability for approximately three months. The number of incidents cited above is excessive.

Ms. Haege testified that the final act of tardiness was due to the fact that she could not find a parking space. However, this problem was not brought to the attention of the employer when she was asked why she was late. Moreover, given the location of the employer's handicapped parking spaces, it seems unlikely it would have taken her 17 minutes to find a space. The administrative law judge did not find Ms. Haege's explanation credible. Detracting from her credibility is the fact that she misrepresented her arrival times on several occasions during the course of her employment. The administrative law judge is more inclined to believe that the tardiness was due to the reason Ms. Haege gave the employer, the fact that her son was home. Given her attendance history and the warnings she had received, reporting to work late in order to be with her son was not a reasonable excuse.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving that Ms. Haege was discharged for excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. Accordingly, it is concluded that misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated March 22, 2007, reference 01, is hereby affirmed. Ms. Haege was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css