

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER L BASCOM
Claimant

APPEAL NO. 13A-UI-11849-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/22/13
Claimant: Respondent (1-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Wells Fargo, filed an appeal from a decision dated October 11, 2013, reference 01. The decision allowed benefits to the claimant, Heather Bascom. After due notice was issued, a hearing was held by telephone conference call on November 13, 2013. The claimant participated on her own behalf. The employer participated by Collection Supervisor Sara Billingsly and was represented by Barnett Associates in the person of Francis Landolfi

ISSUE:

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

FINDINGS OF FACT:

Heather Bascom was employed by Wells Fargo from June 25, 2012 until September 24, 2013 as a full-time collector. She received warnings for absenteeism on December 27, 2012, February 1 and March 11, 2013. The absences were due to illness as the claimant suffers from chronic migraines. She was being treated by a pain management specialist and after the third warning she applied for a leave of absence.

The request form was provided to the employer as well as a statement from the doctor three times and the employer denied it each time because the doctor's statement would not confirm she had been advised to take the time off. Ms. Bascom asserted this was because he had "changed the way he was handling" his patients.

During the time the leave of absence requests were being submitted, reviewed, and denied, the claimant was absent very frequently. These absences were not counted against her at the time because of the processing of the leave requests. Once the third request was denied on or about September 18, 2013, the time off was counted against her and the matter sent to the corporate human resources office for review.

Collections Supervisor Sara Billingsly received notice from the human resources office on September 20, 2013, to discharge the claimant for excessive, unexcused absenteeism. The

claimant called in absent on Monday, September 23, 2013, with another migraine and was not discharged until September 24, 2013.

The issue of whether the claimant is able and available for work given her chronic medical condition has not been adjudicated.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

The employer was aware of the claimant's medical condition during the time she was attempting to get approval for a leave of absence. The absences, as they occurred, were not counted against her pending the review process for the leave request. Once the final leave request was denied then the prior absences were counted against her total. The administrative law judge considers this action by the employer to put the absences beyond a current, final, act of misconduct as required by the provisions of the above Administrative Code section.

The only other absence which occurred after the earlier absences were counted against Ms. Bascom was on September 23, 2013, and it was an absence due to illness which was properly reported. This is not misconduct under the provisions of *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

The issue of whether the claimant is able and available for work given her chronic medical condition should be remanded for determination.

DECISION:

The representative's decision of October 11, 2013, reference 01, is affirmed. Heather Bascom is qualified for benefits, provided she is otherwise eligible.

The matter of deciding whether the claimant is able and available for work is remanded to the Agency.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css