

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY L NIELSEN
Claimant

APPEAL NO. 14A-UI-06124-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 05/18/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stacey Nielsen (claimant) appealed a representative's June 4, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 9, 2014. The claimant participated personally. The employer indicated it would not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 7, 2005, as a full-time securities administrative services specialist. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a verbal warning, a written warning, and a final written warning for attendance issues. The employer notified the claimant that further infractions could result in termination from employment. Three of the claimant's absences were for her own medical issues. Six or seven of the absences were for child care of her twelve-year-old and eighteen-year-old daughters when they were ill and needed care or needed to be collected from school. The claimant did not want to delegate these duties to any other family member or friends as she felt the care of her two children was hers alone.

On May 17, 2014, she requested the afternoon off and the employer granted the claimant's request. The claimant was scheduled to work from 7:15 a.m. until 11:15 a.m. The night before the claimant spent a late night at the hospital when one of her friends passed away. When she got home the claimant planned to go to work the following day. The claimant overslept and did not appear for work or notify the employer she would be late. The employer terminated the claimant on May 19, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's June 4, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs