

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEV D DANIELSON
Claimant

APPEAL NO. 10A-UI-15960-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK
Employer

OC: 10/17/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stevi Danielson filed an appeal from a representative's decision dated November 9, 2010, reference 01, which denied benefits based on her separation from Wells Fargo Bank. After due notice was issued, a hearing was held by telephone on January 10, 2011. Ms. Danielson participated personally. The employer participated by Andrew Simpson, Collections Supervisor, and Erika Brindley, Collections Manager. Exhibits One through Four were admitted on the employer's behalf. The employer was represented by Maxine Piper of Barnett Associates.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Danielson was employed by Wells Fargo Bank from November 2, 2009 until October 13, 2010. She worked full time as a collector. She was discharged due to repeated tardiness in reporting to work.

Ms. Danielson was hired to work a shift that began at 12:00 noon. She was one hour and forty minutes late on March 7, 2010. She was also late on April 11, April 12, April 25, June 22, and June 27. The tardiness ranged from 11 minutes to 50 minutes. She told the employer she was stopped by a train on June 22 when she was 15 minutes late. Ms. Danielson has a young daughter, which caused her to sometimes have difficulty leaving home in time to be at work on time. As a means of accommodating her, the employer changed her start time to 12:30 p.m. in July of 2010.

Ms. Danielson was 10 minutes late on July 13 and 15 minutes late on July 28. She attributed both occasions to the inability to find a parking space right away. She was late on August 2, which caused her to receive an informal warning on August 3. Ms. Danielson was next late on August 12 and August 16. On August 17, she was given a formal written warning regarding her

tardiness. She was given a final written warning on August 31 after she was 10 minutes late on August 30.

Ms. Danielson was 5 minutes late on October 3. She was 7 minutes late on October 4 because she forgot her badge that was needed to enter the building. The decision to discharge was based on the fact that she was 3 minutes late on October 7. She was not scheduled to work again until October 11. At that time, her case was being reviewed by human resources and she was notified of her discharge on October 13. Repeated tardiness was the sole reason for the discharge.

Ms. Danielson wanted to be placed on a day shift because she felt it more compatible with her daughter's schedule. The employer told her she could move to a day shift when one became available, provided there was not another employee with more seniority that wanted it.

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 benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Ms. Danielson was late reporting to work on 14 occasions in 2010. Even if the three occasions caused by parking problems and a train were excluded, there were still 11 occasions of tardiness between March and October, a period of approximately six months. In spite of the warnings, she continued to report to work late. The employer altered her start time by 30 minutes. However, it appears that Ms. Danielson's tardiness, for the most part, continued to be by approximately the same amount of time as prior to the schedule change. This suggests to the administrative law judge that she was not leaving her home at the same time as she had prior to the change. Had she done so, it seems unlikely she would have continued to be late since she had an additional 30 minutes to work with.

The administrative law judge appreciates that it can be difficult to get young children out the door as quickly as desired. Ms. Danielson had been on a 12:00 noon start time since the beginning of her employment. She had ample time to acclimate her daughter to a schedule that would allow her to leave home in time to be at work timely. The employer was under no obligation to make changes to the work schedule to accommodate Ms. Danielson's three-year-old daughter's schedule. The employer was willing to move her to a day schedule but only if a position became available and she had sufficient seniority to move into it.

The administrative law judge considers 11 occasions of unexcused tardiness to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards the employer has the right to expect and is, therefore, misconduct within the meaning of the law.. Ms. Danielson was amply warned that her repeated tardiness was jeopardizing her continued employment with Wells Fargo Bank. In spite of the warnings, she did not take steps to correct the problem. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated November 9, 2010, reference 01, is hereby affirmed. Ms. Danielson was discharged by Wells Fargo Bank for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css