

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA N QUINN
Claimant

APPEAL NO. 12A-UI-04224-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 03/18/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sara Quinn filed a timely appeal from a representative's decision dated April 12, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 5, 2012. Claimant participated. The employer participated by Mr. Kelly Landolphi, Hearing Representative, and witness, Heather Bode, Loan Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Sara Quinn was employed by Wells Fargo Bank NA from November 22, 2010 until March 6, 2012 when she was discharged from employment. Ms. Quinn worked as a full-time loan specialist and was paid by the hour. Her normal working hours were 8:00 a.m. to 5:00 p.m. Monday through Friday. Her immediate supervisor was Heather Bode.

Ms. Quinn was discharged for excessive absenteeism and tardiness. The claimant had received a final warning for attendance infractions on December 12, 2011.

The final incident that resulted in the claimant's discharge took place on February 29, 2012. On that date the claimant did not report for work at her scheduled time and the employer had received no message from Ms. Quinn. Later that morning a company employee went to the claimant's home to check on the claimant and found the claimant sleeping at 11:30 a.m. Ms. Quinn then indicated that she would "be in soon." On March 5, 2012, Ms. Quinn was called to her manager's office to discuss her last incident of tardiness. After questioning Ms. Quinn about the incident, Ms. Bode stated, "Fine" and the meeting ended. After conferring with management, a decision was made to terminate Ms. Quinn and the claimant was discharged the following morning based upon her most recent incident of tardiness and the previous warnings that had been served upon her.

It is the claimant's position that the manager had the "discretion" whether or not to discharge the claimant for the infraction. It is claimant's further position that it was her belief that the tardiness had been authorized by her supervisor because Ms. Quinn had been allowed to return to work after a meeting on March 5, 2012.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The court held that the absences or attendance infractions must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. Absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer. The court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility," e.g. transportation problems, oversleeping, are considered unexcused.

In the case at hand the evidence establishes the claimant had been absent and tardy in the past and had been warned by the employer. The claimant was aware that if she exceeded the permissible number of attendance infractions allowed under company policy she was subject to discharge from employment. The final incident that caused the claimant's discharge took place when the claimant overslept until 11:30 a.m. and missed reporting for work at her normal 8:00 a.m. starting time. The claimant did not provide any notice to the employer and the claimant's attendance infraction was unexcused.

The administrative law judge concludes that the claimant's most recent attendance infraction was not excused by the employer during a meeting that was held on the day preceding the claimant's discharge. The claimant's supervisor took information from the claimant about her most recent attendance infraction. The meeting was concluded and the claimant was allowed to return to work that day while the employer was considering whether the claimant should be discharged from employment. The supervisor did not sanction nor condone the claimant's most recent attendance infraction. Claimant was discharged based upon the final incident and the previous warnings that had been served upon her.

No aspect for the contract of employment is more basic than the right of the employer to expect employees to appear for work on the hour and day agreed upon. The current failure to honor that obligation shows a substantial disregard for the employer's interests and standards of behavior and thus justifies a finding of misconduct in connection with the employment. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 12, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs