

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAISY L WARDLAW**  
Claimant

**APPEAL NO: 10A-UI-02080-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS FARGO BANK NA**  
Employer

**OC: 01/10/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 2, 2010, reference 02, that held she was discharged for misconduct on December 30, 2009, and benefits are denied. A telephone hearing was held on March 24, 2010. The claimant, and her Attorney, John Hemminger, participated. The employer did not participate. Claimant Exhibits A, B & C was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on December 1, 2008, and last worked for the employer as a full-time collector on December 7, 2009. The claimant suffered a job related worker's compensation injury on August 3, 2009. The claimant attempted some part-time work with restrictions, but she experienced difficulty due to continuing pain and discomfort. The claimant sought a second medical opinion regarding her condition.

The claimant stayed in contact with her employer regarding her absences from work during the period of her absence. She and the employer waited on the second opinion medical letter (Dr. Rondinelli) until December 23 when a third party consultant informed the claimant by letter that it determined the claimant was no longer eligible for worker's compensation benefits. The claimant was seen by a doctor at Broadlawns Medical Center who excused her from work for December 23 & 24. The employer notified the claimant by certified letter dated December 30 that she was terminated for excessive absenteeism for failing to provide medical documentation regarding her absences after December 7.

The employer failed to respond to the hearing notice.

**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(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 administrative law judge concludes the employer has failed to establish the claimant was discharged for misconduct in connection with employment on December 30, 2009, for excessive "unexcused" absenteeism.

Absences due to properly reported illness are excusable, and do not constitute job disqualifying misconduct. The claimant put the employer on notice she was absent from work after December 7 due to her job related injury and waiting for the second medical opinion that was not provided until December 23, and she continued to advise the employer of her reason for absence until her termination. The claimant was terminated for no act of misconduct on December 30.

**DECISION:**

The department decision dated February 2, 2010, reference 02, is reversed. The claimant was not discharged for misconduct on December 30, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs