

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA C ANDERSON
Claimant

APPEAL NO. 10A-UI-09135-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 05/09/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Karla Anderson, filed an appeal from a decision dated June 21, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 12, 2010. The claimant participated on her own behalf and was represented by Jennifer Donovan. The employer, Wells Fargo, did not participate.

ISSUE:

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

FINDINGS OF FACT:

Karla Anderson was employed by Wells Fargo from December 29, 2008 until May 13, 2010 as a full-time collections specialist. She received only one disciplinary action, a final written warning on May 9, 2010, from Supervisor Theotto Lillard. She had missed seven days, four on a pre-approved personal medical leave and three for pre-approved family medical emergency.

After receiving the warning, she e-mailed a human resources representative stating she should have received verbal and written warnings first. She received no reply. On May 11, 2010, she was tardy 25 minutes because she had an early morning doctor's appointment that ran longer than expected due to some complications. She had notified her supervisor the day before she might be "a little late" because of the appointment. The doctor provided a statement to the employer about the unexpected length of the appointment and documenting when the claimant left the office.

The claimant was discharged by Mr. Lillard on May 13, 2010, for excessive absenteeism.

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.

The claimant was discharged for absenteeism. But, all of the absences for which she had been warned were for pre-approved personal or family medical issues. The final tardiness was also pre-approved and excused by a doctor's note. A properly reported illness cannot be considered misconduct, as it is not volitional. *Cosper v. IDS*, 321 N.W.2d 6 (Iowa 1982). There was no final incident of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 21, 2010, reference 01, is reversed. Karla Anderson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw