

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RAYMOND A STELZER**  
Claimant

**VA CENTRAL IA HEALTHCARE**  
Employer

**APPEAL 20R-UCFE-00005-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/27/19  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 21, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for January 6, 2020 at 3:00 p.m. No hearing was held because appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. On January 8, 2020, a default decision was issued dismissing the appeal. (See Appeal Number 19A-UCFE-0031-AW-T)

On January 21, 2020, claimant appealed to the Employment Appeal Board (EAB). On February 6, 2020, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on February 21, 2020, at 11:00 a.m. Claimant participated. Employer participated through Michelle Kroymann, Human Resources Specialist. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 515 Stuart Court, Iowa City, Iowa on November 21, 2019. That was claimant's correct address on that date. (Claimant Testimony) Claimant received the decision on Tuesday, December 3, 2019. (Claimant Testimony) The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by December 1, 2019. However, if the due date falls on a Saturday, Sunday or a legal holiday, the appeal period is extended to the next working day. Claimant submitted his appeal via facsimile on December 5, 2019. Claimant's appeal was received by Iowa Workforce Development on December 5, 2019.

Claimant was employed as a full-time Nurse Case Manager from March 2015 until his employment with VA Central Iowa Healthcare ended on October 17, 2019. (Claimant Testimony) Claimant worked Monday through Friday from 7:30 a.m. until 4:00 p.m. (Claimant Testimony) Claimant's direct supervisor was Leslie Huber, Nurse Manager. (Claimant Testimony) Maintaining a valid nursing license was a condition of claimant's employment. (Claimant Testimony) On October 8, 2019, Huber emailed claimant a reminder that his license needed to be renewed by October 15, 2019 and that claimant could not work without renewing his license. (Kroymann Testimony) On October 9, 2019, claimant acknowledged receipt of the email. (Kroymann Testimony)

Employer has a policy that employees are required to maintain any professional licenses necessary for their employment and that failure to do so will lead to separation from employment. (Kroymann Testimony) The policy is included in the employee handbook, which is available upon request. (Kroymann Testimony) The job posting for claimant's position also stated that maintaining a valid nursing license was a condition of employment. (Kroymann Testimony) Claimant was not aware of the policy but knew that maintaining his nursing license was a requirement of his employment. (Claimant Testimony) Claimant's nursing license expired on October 15, 2019. On October 17, 2019, employer discharged claimant for failure to maintain a valid nursing license. (Kroymann Testimony)

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(c) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*,

276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The record in this case shows that claimant received the decision after the appeal deadline. Therefore, claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed his appeal within two days of receiving the decision. Claimant's appeal is timely.

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 disqualification shall continue 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(1)(a) provides:

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.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Employer is not obligated to accommodate the claimant during a lapse in his nursing license; employer has a legal obligation to abide by healthcare statutes and regulations. Claimant knew that maintaining his nursing license was a requirement of his employment, yet allowed his nursing license to expire. Claimant's failure to maintain his nursing license, as a known condition of his employment, was misconduct sufficient to warrant a denial of benefits. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

Claimant's appeal was timely. The November 21, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Decision Dated and Mailed

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