

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUBEN HERNANDEZ
Claimant

APPEAL NO. 09A-UI-06716-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLUMROSE USA INC
Employer

OC: 02/22/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Ruben Hernandez, appealed an unemployment insurance decision dated March 23, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 28, 2009. The parties were properly notified about the hearing. Hernandez participated in the hearing with the assistance of interpreter, Ike Rocha. Margaret Barnes participated in the hearing on behalf of the employer with witnesses, Bonnie Hernandez and Jaycie Hathaway.

ISSUES:

Did Hernandez file a timely appeal?

Was Hernandez discharged for work-connected misconduct?

FINDINGS OF FACT:

Ruben Hernandez worked full time as a production worker from May 16, 2008, to February 20, 2009. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer 30 minutes before the start of their shift if they were not able to work as scheduled. Hernandez was repeatedly late or absent from work prior to December 5, 2008. On some occasions, he had medical excuses for absences but other absences were unexcused. He was warned about excessive absences and tardiness on December 5, 2008.

On February 19, 2009, Hernandez reported about three hours late for work. He did not call and notify the employer that he was going to be late for work.

The employer discharged Hernandez on February 20, 2009, for excessive unexcused absenteeism.

An unemployment insurance decision was mailed to the claimant's last-known address of record on March 23, 2009. The decision concluded he had been discharged for work-connected

misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 2, 2009.

Due to an error by the United States Postal Service, which delivered the decision to a neighbor's mail box, Hernandez did not receive the decision within the ten-day period for appealing the decision. He received it on April 22, 2009. He filed a written appeal on April 27, 2009, after contacting a local Workforce Development representative.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether Ruben Hernandez filed a timely appeal. The unemployment insurance law states that a decision is final if it is not appealed within ten days after the decision is mailed to the party's last known address. Iowa Code § 96.6-2: A failure to file a timely appeal is excused if it is due to an Agency error or misinformation or delay or other action of the United States Postal Service. 871 IAC 24.35(2).

In this case, the failure to file a timely appeal is excused because it was due to an error by the United States Postal Service.

The next issue in this case is whether Hernandez was discharged for work-connected misconduct as defined by the unemployment insurance law.

The law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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. 871 IAC 24.32(7).

Hernandez had a history of excessive unexcused absences and tardiness, he was warned about this on December 5, 2008, and he was late without proper notice on February 19, 2009. The evidence shows the claimant was discharged for excessive unexcused absenteeism, which meets the definition of misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated March 23, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid

wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css