

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JORGE S QUIJADA-LOPEZ
Claimant

APPEAL NO. 14A-UI-04981-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEAN FOODS NORTH CENTRAL LLC
Employer

OC: 03/30/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 30, 2014, reference 01, that concluded he was discharged for work-connected misconduct. Telephone hearings were held on June 3 and June 16, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of interpreter, Rafael Geronimo. David Moehle participated in the hearing on behalf of the employer with witnesses Luann Jager, Vikky Christensen, Ed Gorden, and Sheri Sonko. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Did the employer file a timely protest?
Did the claimant file a timely appeal?

FINDINGS OF FACT:

The claimant worked full time for the employer as a blending operator from September 28, 2009, to February 23, 2014. He was informed and understood that having a valid work authorization document was a legal requirement for being employed. The last time the claimant renewed his work authorization, he did not receive it until three days after it expired.

The employer has a system in place to notify employees about the need to renew their work authorization to retain their jobs. The claimant knew that his work authorization would expire on February 23, 2014. The employer sent him notices that he needed to get his work authorization renewed on September 9, October 9, November 8, December 9, January 9, and February 10. In addition, someone with human resources spoke to the claimant to emphasize his need to get his work authorization renewed to keep his job. The claimant, however, did not apply for the work authorization until December 2013 because he did not feel he could afford the \$500 filing fee.

The claimant was discharged on February 23, 2014, because he failed to get his work authorization renewed. He did not get his work authorization until the end of March 2014. He contacted the employer about returning to work, but he was told that he would have to work through a temporary service at a lower rate of pay.

The claimant filed a new claim for unemployment insurance benefits effective March 30, 2014. A notice of his claim was transmitted to the employer on April 3, 2014, and the employer was informed that its response was due on April 14, 2014. The employer transmitted its protest of the claimant at 12:20 p.m. on April 14.

An unemployment insurance decision was mailed to the claimant's last-known address of record on April 30, 2014. The decision concluded he was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 10, 2014.

The claimant received the decision within the ten-day period for appealing the decision, but due to language problems, he did not understand the content of the decision until he contacted Workforce Development after receiving an overpayment decision dated May 9, 2014. He filed a written appeal on May 14, 2014.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits. The law requires an employer to protest a claim for benefits within ten days from the date that the notice of the claim is mailed to the employer. Iowa Code § 96.6-2. The rules provide that the final day for submitting a protest or appeal is extended to the next business day if it falls on a Saturday, Sunday, or legal holiday. In this case, the employer filed its protest on April 14, 2014, which was the due date of filing the protest. The protest was timely.

The law further states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 claimant filed his appeal late because he did not understand the content of the decision until he was informed about it after getting the overpayment decision. As a result of language problems, the claimant did not have a reasonable opportunity to file a timely appeal. The appeal is deemed timely.

The final issue is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance 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).

The claimant's violation of a work policy was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He knew he needed to have a valid work authorization to keep his job. He knew that he had problems in the past with getting his work authorization on time. He should have been prepared and submitted the application earlier instead of waiting until December. He knew he needed to have the funds to renew his work authorization and budget accordingly. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 30, 2014, 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

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