IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHELLE R SHADE
Claimant

MEDIACOM COMMUNICATIONS CORP
Employer

APPEAL NO. 09A-UI-02619-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12/28/08
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Michelle R. Shade (claimant) appealed a representative's January 30, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Mediacom Communications Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2009. The claimant participated in the hearing. The employer received the hearing notice and responded by sending a fax to the Appeals Section on February 24, 2009, indicating that it was opting not to participate in the hearing but was submitting documentation in lieu of participation. As a result, the employer did not directly participate in the hearing. During the hearing, Exhibit A-1 and Employer's Exhibit One were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on January 30, 2009. The claimant did not receive the decision. Other mail sent from the Agency to the claimant has been returned by the United States Postal Service, even though the claimant has verified with the Postal Service that there has been no change in her mailing address or status. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 9, 2009. The appeal was not filed until hand delivered to a local Agency office on February 18, 2009, which is after the date noticed on the disqualification decision but the day the claimant learned of the entry of the decision.

The claimant started working for the employer on November 27, 2007. She worked full time as a customer sales and service representative in the employer's West Des Moines, Iowa call center. Her last day of work was December 11, 2008. The employer discharged her on that date. The reason asserted for the discharge was unsatisfactory performance.

The claimant had been given several prior warnings for various job performance issues, including a final warning on October 30 for an inappropriate interaction with her supervisor. The final incident that triggered the discharge was a customer complaint from a call the claimant had handled on December 1. The customer was asserting that his credit card had been charged twice. The claimant accessed all of the systems and information to which she was authorized, but was unable to resolve the issue. The employer had recently imposed a restriction where each representative could only refer two calls to the supervisor call queue per day, and the claimant had already used up her two calls. There was only one supervisor on the floor, but that supervisor was occupied with another representative, and the employer had also dictated that callers could not be placed on extensive hold. As a result, the claimant ended the call by indicating that the next step under her authority would be for the customer to obtain and provide documentation of the double charge, which was consistent with the employer's protocols. The customer later called back in, was transferred to a supervisor, and complained about the claimant's handling of the matter.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa 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 administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her handling of the December 1 call after her prior warnings. Under the circumstances of this case, the claimant's handling of the call was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 30, 2009 decision (reference 02) is reversed. The appeal in this case is treated as timely. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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