IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BIFTU M JIBRIL Claimant **WELLS ENTERPRISES INC** Employer	**APPEAL 22A-UI-01177-DH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/22/21** **Claimant: Appellant (2)**

Iowa Code § 96.6(2) - Timely Appeal
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct

STATEMENT OF THE CASE:

December 8, 2021, Biftu Jibril, claimant, filed an appeal from the November 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon finding an August 22, 2021 discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on February 3, 2022. The claimant personally participated. Her son, Ana Jibril was on the line but did not testify. Oromo interpreter #13851 participated by providing interpretation services. The employer, Wells Enterprises, Inc., failed to participate in the hearing. Judicial notice was taken of the administrative record.

ISSUES:

Is the appeal timely?
Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed evidence in the record, the undersigned finds:

The above decision (reference 01) was mailed to the claimant/appellant's last known address of record on 11/24/2021. To be timely, an appeal needed to be filed on or before 12/04/2021. That date falls on a weekend and therefore, the deadline is extended to the next working day, 12/06/2021. The decision also directed appellant to call the customer service line for assistance. Claimant never received the denial of benefits decision. The first knowledge she had of the decision reference 01 was when she contacted Iowa Workforce Development to find out why her unemployment benefits stopped and learned about the decision, which was emailed to her and she filed her appeal the same day, December 8, 2021.

Claimant was employed full-time with a varied schedule as a flex crew member. Her first day of work was January 7, 2021. Her last day worked was approximately August 24, 2021.

The employer did not participate in the appeal. The employer did not testimony in the appeal nor submit any exhibits for the appeal once the appeal was filed.

On August 20, 2021, claimant was managing two lines. A lady came and directed claimant to go to another area for work on a few occasions that shift, and she complied. This lady started yelling at her, but claimant did not understand her issue since a crew was sent on break due to the line being broke and in the process of being repaired, resulting in an earlier break. This happened at least twice. After the second time, it was the end of my shift. On my next day back, I was accused of being gone for six hours. I explained everything and was told we don't need you anymore and you are fired. Claimant does not know why or understand why she was fired. Claimant asserts she was there working and it can be proven if they check their cameras.

Claimant did not receive a copy of an employee handbook.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

> Date of submission and extension of time for payments and notices.
> (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.
>
> a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
> b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
> c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
> d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n,* 212 N.W.2d 471, 472 (Iowa 1973). Claimant first learned of the decision when their benefits stopped, she contacted an IWD office to learn why and was informed of the decision denying benefits. IWD emailed her a copy of the decision. Claimant filed her appeal the same day. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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:
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> 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.
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> 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 has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986).

Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Employer did not participate. Employer failed to meet their burden of proof in establishing misconduct. Claimant received no handbook which would establish expectations. No evidence that claimant was warned of any misconduct or knew that her job was in jeopardy. While the employer may have had good reasons to let claimant go, without proof of that disqualify reason provided, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The November 24, 2021, (reference 01) unemployment insurance decision is **REVERSED**. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Darrin T. Hamilton
Administrative Law Judge

April 8, 2022
Decision Dated and Mailed

dh/jh

Note to Claimant:

Claimant provided a corrected address during the hearing, changing the Nebraska address to an Iowa address. That corrected address is noted on the cover page of this decision. Claimant is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so that their information can be updated within our systems and not just on this one printed decision.