

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BILL J ALLEN**  
Claimant

**APPEAL NO. 13A-UI-11071-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TITAN TIRE CORPORATION**  
Employer

**OC: 12/23/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 5, 2013, reference 01, that concluded he was discharged for work-connected misconduct. Telephone hearings were held on October 22 and November 1, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. John Nestor participated in the hearing on behalf of the employer. During the hearing on October 22, 2013, I neglected to take evidence on the timeliness of the claimant's appeal. Nestor agreed that I could contact the claimant and take evidence on the timeliness issue without his participation. The hearing regarding the timeliness of the claimant's appeal was held on November 1, 2013.

**ISSUES:**

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

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a maintenance mechanic from October 4, 2010, to August 5, 2013. He worked the third shift from 11 p.m. to 7 a.m. He was informed and understood that under the employer's work rules, sleeping during work hours is prohibited.

On August 5, 2013, the claimant violated the work rules about sleeping during work hours. He was having some problems with a headache. Instead of going to the emergency medical technician on duty, he went to a secluded unlit area underneath a stairway sometime around 2 a.m. He lay down on a stack of floor dry bags placed on the floor. Employees reported to supervisors that the claimant was sleeping. Two supervisors discovered the claimant asleep under the stairs. One of the supervisors had to use a flashlight to wake him up. The claimant claimed he was not asleep but was just trying to get rid of a headache. In any event, he was not on a break (he had already taken his break at 1 a.m.), was not working, and had not asked for or received permission to take a break.

The employer discharged the claimant on August 7, 2013, for sleeping on the job.

An unemployment insurance decision disqualifying the claimant from receiving benefits was mailed to the claimant's last-known address on September 5, 2013. The deadline for appealing was September 15.

The claimant faxed in his appeal to the Appeals Bureau on September 9, 2012, before the deadline of September 15 but for some reason, the fax was not received by the Appeals Bureau. When he discovered this, he sent in a second appeal by fax on September 30.

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

The first issue in this case is whether the claimant filed a timely appeal.

The law 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. I conclude that the claimant did fax in his appeal within ten days, but due to some error, the appeal was not received by the Appeal Bureau. Since the failure to receive a timely appeal was due to an Agency error, the delay would be excused under 871 IAC 24.35(2). The appeal is deemed timely.

The next issue in this case 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that he did not go under the stairs to sleep. He did not check in with a supervisor or the EMT on duty. He was not on an authorized break. I believe the employer's evidence that he was observed sleeping and the supervisor had to use a flashlight to wake him.

The claimant's violation of a known work rule 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated September 5, 2013, 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.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs