IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JULES J ALEXIE Claimant **DTM INCORPORATED** Employer	**APPEAL 17A-UI-00336-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/11/16** **Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 27, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2017. Claimant participated. Employer participated through Dawn Schlesselman, Owner; and Dee Koen, Manager in training.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged due to job connected misconduct or did he voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an employee who performed all tasks at the convenience store/truck stop where he worked from January 2016 through November 25, 2016 when he was discharged. The business is located in Elkader, Iowa.

At the time he began working at the business, the claimant was living with and involved in a romantic relationship with Ms. Schlesselman the business owner. Their romantic relationship had begun in March 2014.

The claimant made arrangements with Ms. Schlesselman to be off work from November 16 through November 23 to return to his home state of Louisiana to attend the funeral of his aunt. He expected to be back at work on November 24. At that time the claimant regularly drove a car that was owned by Ms. Schlesselman. Use of the car was part of the claimant's perks of the job. Part of the claimant's job benefits also included the employer paying for his cell phone, gasoline for his car, use of a credit card and a place to live in Ms. Schlesselman's home. The claimant ended up flying from La Crosse, Wisconsin to Louisiana. He drove the car owned by Ms. Schlesselman to the La Crosse airport and left it parked there intending to drive it back to Elkader when he returned from Louisiana. Elkader to La Crosse is a distance of about sixty miles.

The claimant had minimal and spotty cell phone reception while he was in Louisiana. He had explained to Ms. Schlesselman before he left Iowa that he would not have good cell phone reception while he was in Louisiana and that he might not always get her calls or texts.

On November 20, days before the claimant was due to return to Iowa, Ms. Schlesselman sent him a text telling him that she was ending their romantic relationship. She also told him it would be a good idea for him to just stay in Louisiana and not to return to Iowa. The claimant believed he had just lost his job and his place to live and his personal romantic relationship. After he received the November 20 text, the claimant notified Ms. Schlesselman that he would be returning to Iowa on Saturday November 26, instead of November 24. Ms. Schlesselman then went to the La Crosse airport on November 25 and retrieved the car the claimant had been driving. The claimant then had no way to get the sixty or so miles from the La Crosse airport back to Elkader Iowa. The claimant ended up riding back to Elkader from Louisiana with his son. He arrived back in Iowa on November 29 and ended up staying with his son who lives in Iowa City, approximately 100 miles from Elkader.

At no time did the claimant tell Ms. Schlesselman that he was quitting or wanted to quit. Prior to this incident the claimant had not missed any time from work, nor had he had any warnings about his attendance. Ms. Schlesselman wanted to end their romantic relationship and as part of that split, wanted the claimant to end his employment.

The claimant did not receive the decision denying him benefits in time to file a timely appeal. The claimant had moved to Iowa City to live with his son and his mail was not being properly forwarded.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs “a” through “h”. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's

> account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within days of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant left work for one week with permission to attend a family funeral. At no time did he indicate he was quitting his job. The claimant did not change his return date to Iowa until he was told on November 20 that he should just stay in Louisiana. When told by his boss three days before he was to return to Iowa that he should 'just stay in Louisiana," claimant's interpretation of the conversation as a discharge was reasonable and the burden of proof falls to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer discharged the claimant because she wanted to end their personal relationship and no longer wanted him as an employee of her business. The claimant had not been given any warnings about any of his conduct at work. The employer's desire to end the claimant's employment was due to her desire to end their personal relationship. Those circumstances do not amount to job connected misconduct. The employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The December 27, 2016, (reference 01) decision is reversed. The claimant did file a timely appeal. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs