

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN M BRANSTAD

Claimant

APPEAL NO: 15A-UI-01116-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICHELS CORPORATION

Employer

OC: 05/04/14

Claimant: Appellant (2)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 11, 2014 (reference 01) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit this employment for reasons that do not qualify him to receive benefits. The claimant participated at the February 19 hearing with his union representative, Chad Carter. The employer did not respond to the hearing notice or participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that based on the reasons for his employment separation, the claimant is qualified to receive benefits.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer rehired the claimant in July 2014 to work as a full-time operator/engineer. When the employer rehired him, the claimant understood he was required to provide his own transportation. The claimant worked as scheduled on August 20, 2014.

On August 21 the claimant was in a vehicular accident. As a result, of the accident, he did not have a vehicle to get to work for a couple days. The claimant notified the employer about the accident and asked the employer to keep his job open until he had transportation again. When the claimant called the employer on Sunday, August 24 the employer informed the claimant his job had been eliminated. The claimant planned to return to work the next day or on Tuesday.

The claimant reopened his claim the week of August 24, 2014. The claimant did not receive the September 11, 2014 determination that disqualified him from receiving benefits. The determination had been mailed to the wrong address. In addition to disqualifying the claimant from receiving benefits, the determination also informed the parties an appeal had to be filed on or before September 21, 2014.

The claimant did not know he had been disqualified from receiving benefits until he reopened his claim again in late October 2014. It took the claimant until early December to find out why he had been disqualified from receiving benefits. Within a week of finding out why he was disqualified, he filed an appeal on December 10, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the September 22, 2014 deadline for appealing expired. Since September 21 was a Sunday, the deadline to appeal was automatically extended to Monday, September 22, 2014.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not have a reasonable opportunity to file a timely appeal when the Department did not mail the September 11 determination to his correct address.

The claimant's failure to file a timely appeal was due to an Agency error, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Bureau has legal authority to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant quit this employment. Instead, he was temporarily without a vehicle to get to work because of an accident he was in on August 21, 2014. On August 24 the employer eliminated the claimant's job. In this case, the employer ended the claimant's employment.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

When the employer eliminated the claimant's job, the employer discharged him for reasons that do not amount to work-connected misconduct. As of August 24, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's September 11, 2014 (reference 01) determination is reversed. The claimant filed a late appeal but established a legal excuse for filing a late appeal. The Appeals Bureau has jurisdiction to address the merits of the claimant's appeal. The claimant did not voluntarily quit this employer. Instead, the employer eliminated the claimant's position. As a result, the employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 24, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can