

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER BROWN**  
Claimant

**APPEAL NO: 13A-UI-08913-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENNOX INDUSTRIES INC**  
Employer

**OC: 06/02/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Christopher Brown (claimant) appealed an unemployment insurance decision dated June 21, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Lennox Industries, Inc. (employer) without good cause attributable to the employer. Due notice was issued scheduling the matter for a telephone hearing to be held September 9, 2013. Because a decision fully favorable to the parties could be made based on the administrative record and other information, a hearing was deemed unnecessary.

**ISSUE:**

The issue is whether the claimant's appeal is timely, and if so, whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on June 21, 2013. The claimant did not receive the decision within the ten-day time period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 1, 2013. The appeal was not filed until July 31, 2013, which is after the date noticed on the disqualification decision.

The claimant was employed as a full-time assembler from January 5, 2011 through May 30, 2013 when he was discharged for absenteeism. Dick Tessler and Brent McDowel from Lennox Industries do not contest benefits.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

The claimant did not receive the decision within the ten-day time period allowed for the appeal. He did file an appeal immediately upon receiving information he had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant was discharged for work-related misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 30, 2013 but the employer does not contest benefits. Consequently, work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The claimant's appeal is timely. The unemployment insurance decision dated June 21, 2013, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css