

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON A MEISTER
Claimant

APPEAL NO. 07A-UI-07269-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

**OC: 06/24/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Jon Meister filed an appeal from a representative's decision dated July 12, 2007, reference 01, which denied benefits based on his separation from Wells Dairy, Inc. After due notice was issued, a hearing was held by telephone on August 14, 2007. Mr. Meister participated personally. The employer participated by Mark McCarty, Human Resources Manager, and Mike Ely, Supervisor. The employer was represented by David Williams of Talx Corporation. The administrative file was admitted as Division Exhibit I.

ISSUE:

The first issue is whether Mr. Meister's appeal should be deemed timely filed. If the appeal is considered timely, the issue then becomes whether Mr. Meister was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Meister at his address of record on July 12, 2007. The decision indicated that an appeal was due by July 22. Because the due date fell on a Sunday, the deadline would be extended to the following Monday, July 23. Mr. Meister did not receive the disqualifying decision. He contacted his local Workforce Development office and was told a decision had been sent to him in the mail. He filed an appeal on July 27, 2007. He still had not received the decision at that point.

Mr. Meister was employed by Wells Dairy, Inc. from June 1, 2006 until June 21, 2007 as a full-time freezer technician. He was discharged for not properly reporting his absences. Employees are required to call before the start of the work shift and speak directly with a supervisor or facilitator. A voice message can be left but only to establish the time of the initial report. If the employee is unable to speak directly to someone when the initial call is placed, he must continue calling until he can speak directly with a supervisor or facilitator.

On March 30, 2007, Mr. Meister called before the start of his shift to request the night off. He was told he could not have the time off. Mr. Meister did not at that time indicate he would not be at work. After the start of his shift, he called to report that he would be absent. As a result of his failure to timely report the intent to be absent, Mr. Meister received a written warning and three-day suspension on April 17. The warning reiterated the employer's policy regarding reporting absences. Mr. Meister was absent on May 25 and left a message before the start of his shift. He also called in later to speak with a supervisor.

The decision to discharge was based on the fact that Mr. Meister failed to speak directly to a supervisor to report his absence of June 19. He left a voice message before the start of his shift indicating he would be absent. He did not call back later in the day to speak to a supervisor or facilitator. As a result, he was discharged on his next scheduled workday, June 21, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual has ten calendar days in which to appeal from a representative's decision. Iowa Code section 96.6(2). Mr. Meister did not receive the July 12, 2007 decision disqualifying him from receiving benefits based on his separation from Wells Dairy, Inc. Therefore, he could not have perfected an appeal by the July 23 due date. He could have exercised more diligence by going to his local office to obtain a copy of the decision. He also could have appealed without having a copy of the decision, which is what he eventually did. However, the fact remains that he did not receive the decision that would have spelled out his rights and responsibilities. For the reasons cited above, the administrative law judge concludes that the appeal filed on July 27, 2007 shall be deemed timely filed. Therefore, the administrative law judge has jurisdiction over the separation issue.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Meister was discharged for violating the employer's standards regarding reporting absences. The policy is clear that an individual has to call before the start of the shift and speak directly to a supervisor or facilitator to report an absence. It is also clear that leaving a voice message is only part of the responsibility.

Mr. Meister received a written warning on April 17 that reiterated the employer's requirements for reporting absences. Although the absence of March 30 that prompted the warning presented a different fact pattern than that of June 19, the fact remains that Mr. Meister was reminded of the employer's policy when given the warning. He clearly understood the requirements because he left a voice message on May 25 and followed up with direct contact with a supervisor. The evidence does not establish any justification for Mr. Meister's failure to follow the policy on June 19.

The administrative law judge has considered the fact that Mr. Meister was reminded of the reporting requirements on April 17 and was able to adhere to them on May 25. His failure to adhere to the policy on June 19 constituted a substantial disregard of the standards he knew the employer expected of him. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated July 12, 2007, reference 01, is hereby affirmed. Mr. Meister was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs