

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L CROM
Claimant

APPEAL NO. 07A-UI-11326-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

OC: 10/28/07 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(8) – Current Act of Misconduct
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Sandra L. Crom filed an appeal from an unemployment insurance decision dated November 27, 2007, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held December 26, 2007, with Ms. Crom participating on her own behalf and being represented by Richard B. Maher, attorney at law. Exhibit A was admitted into evidence on her behalf. Frank Eckert of TALX UC eXpress appeared on behalf of the employer, Iowa Department of Human Services/Glenwood Resource Center. Treatment Program Administrator Doug Wise testified. Exhibit D-1, the claimant's appeal letter, was also admitted into evidence.

ISSUE:

Did the claimant file a timely appeal?

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sandra L. Crom was employed by the Iowa Department of Human Services from December 3, 1982, until she was suspended on July 10, 2007, and subsequently discharged on October 31, 2007. She last worked as a resident treatment worker at the Glenwood Resource Center.

The final incident leading to discharge occurred on July 10, 2007. Ms. Crom was placed on suspension with pay at that time, pending an investigation. An internal investigation was completed on or about July 18, 2007. The employer took no further action against the claimant until October 31, 2007, following a report from the Department of Inspections and Appeals.

At the time that Ms. Crom filed her claim for unemployment insurance benefits, she resided in Thurman, Iowa. In November 2007, she moved from the state. She provided a change of address form to the United States Postal Service. She notified Iowa Workforce Development of

her new address, but the fact-finding decision was mailed to her Thurman, Iowa address. Ms. Crom actually received the adverse decision on December 10, 2007. She filed an appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. For the reasons that follow, he concludes that he does. Iowa Code section 96.6-2 gives parties ten days from the date of a fact-finding decision to file an appeal. The Supreme Court of Iowa has ruled that the time limit is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The only exceptions to this rule are when the delay is the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. The evidence establishes that Ms. Crom made a good-faith effort to notify the Agency and the U.S. Postal Service of her new address. It also establishes that she filed her appeal immediately upon learning of the adverse decision. Under these circumstances, the appeal can be accepted as timely.

The remaining question is whether the evidence establishes that the claimant was discharged because of disqualifying misconduct. It does not.

Iowa Code section 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:

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The evidence establishes that the incident leading to discharge occurred on July 10, 2007, and that the employer's own investigation was completed on or about July 18, 2007. Despite this, the employer waited until late October 2007 to take action. The administrative law judge concludes that the final incident leading to discharge was not a current act. The administrative law judge need not and does not draw any conclusion as to whether the final incident would have constituted disqualifying misconduct had the employer acted in a timely fashion.

DECISION:

The unemployment insurance decision dated November 27, 2007, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw