

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYI MYINT**  
Claimant

**APPEAL NO. 12A-UI-06376-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 01/01/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Kyi Myint, appealed an unemployment insurance decision dated February 16, 2012, reference 02, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 20, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Benjamin Aung. Javier Sanchez participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a production worker from January 27, 2009, to December 13, 2011. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant received a final written warning on December 6, 2011, for having eight attendance occurrences. The employer discharges employees who have nine attendance occurrences.

Despite the fact that the claimant did not have any other attendance occurrences, when the claimant reported to work as scheduled on December 13, 2011, she was sent to the office. Two clerks informed the claimant that she needed to turn in her company identification and her equipment. She was not told why. She went to the union office with an interpreter and asked about her termination, but the union representative only told her that she needed to turn in her ID and equipment to get her final check.

The employer prepared a separation form on December 17, 2011, which stated that the claimant was absent without notice on December 14, 15, and 16 and was terminated.

An unemployment insurance decision was mailed to the claimant's last-known address of record on February 16, 2012. The decision concluded she voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 26, 2012.

The claimant received the decision but does not read English and she did not know what it said. She found out on June 1 when her son found the decision and explained what it said. She filed a written appeal on June 1, 2012, which is after the time period for appealing had expired.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the appeal should be considered timely. The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed her appeal late because she does not read English and she was unaware of what the decision was. The claimant did not have a reasonable opportunity to file a timely appeal. The appeal is determined timely.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that she reported to work

on December 14 and was told to turn in her ID and equipment, which she reasonably believed meant she was discharged. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated February 16, 2012, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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