

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA MANN**

Claimant

**APPEAL NO: 12A-UI-00986-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES OF NE IA INC**

Employer

**OC: 12/04/11**

**Claimant: Appellant (1)**

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 January 11, 2012 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Tom Kuiper, a TALX representative, appeared on the employer's behalf. Sharon Samec, the vice president of human resources, testified on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUES:**

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

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2009. The claimant worked as a part-time community trainer. The claimant usually worked the 3:30 p.m.-to-9:30 a.m. shift. The claimant's position required her to possess a valid driver's license. (Employer Exhibits One and Two.) Part of the claimant's job duties, at times, required her to drive clients to appointments, to do errands, or in an emergency.

The claimant was charged with an OWI in mid-August 2011. She informed her supervisor, K.M., about the arrest within a few days of being charged. The claimant told K.M. that she was going to fight the charge. K.M. warned the claimant that if she were convicted, the claimant could lose her job.

Samec did not know about the claimant's OWI charge until early October. Since the claimant had not been convicted and still had her driver's license, Samec told K.M. that the claimant was not allowed to drive at work. The claimant took a plea deal instead of going to trial and entered

a guilty plea on October 11, 2011. She immediately informed K.M. about her plea and that her driver's license would be revoked. The claimant filed for extensions and kept her driver's license until late October or early November.

Samec monitored the online court records to verify the claimant's guilty plea and the status of her driver's license. Samec learned on November 1 that the claimant pled guilty and her license had been revoked. The employer discharged the claimant on November 11, 2011. When the claimant's license was revoked, she could not meet one of the minimum requirements of her job – possessing a valid driver's license.

The claimant established a claim for benefits during the week of December 4, 2011. On January 11, 2012, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of November 11, 2011. The determination informed the parties an appeal had to be filed or postmarked on or before January 21, 2012.

The determination was mailed to the claimant's address in Ridgeway. The claimant moved to Decorah in early January and had mail from Ridgeway forwarded to her in Decorah. The claimant received the January 11 determination on January 25 and faxed her appeal on January 26, 2012. The claimant advised the Department she had moved to Decorah before she received the January 11, 2012 determination.

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

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 January 23, 2012 deadline for appealing expired. Since January 21 was a Saturday, the deadline to appeal was automatically extended to Monday, January 23.

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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because she did not receive the determination until January 25.

The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service in forwarding her mail, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of her appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Before the claimant entered her guilty plea to the OWI charge, her supervisor told her she could lose her job if she was convicted and lost her driver's license. Even though the employer waited for confirmation the claimant had been convicted and her license was revoked, the claimant knew her job was in jeopardy in early October. The claimant's argument that the employer should have allowed her to continue her employment because she usually did not have to drive anyone at night is without merit, because her job description required her to maintain a valid driver's license. Also, the claimant's job description indicated a driver's license was necessary in case of an emergency. While the claimant primarily worked night shifts, she also filled in on shifts during the day. In this case, the claimant's off-duty conduct resulted in the loss of her driver's license that was a requirement of her job. The claimant committed work-connected misconduct when she chose to drive while under the influence and was convicted of an OWI charge. Therefore, as of December 4, 2011, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's January 11, 2012 determination (reference 02) is affirmed. The claimant did not file a timely appeal, but she established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of her appeal. The claimant's off-duty conduct that led to the revocation of her driver's license constitutes work-connected misconduct, since the claimant's job required her to possess a valid driver's license. The claimant is disqualified from receiving unemployment insurance benefits as of December 4, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw