

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY L CAROLAN
Claimant

APPEAL NO: 13A-UI-07156-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 05/12/13
Claimant: Appellant (2)

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 May 31, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUES:

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

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time business office manager. The claimant began this job in January 2013.

On May 10, the claimant's supervisor talked to the claimant about another job opening the employer had. The employer thought the claimant would be good at either job and asked her to consider the other job. The claimant had not thought about changing jobs since she had just started the business office manager job in January. The claimant's supervisor asked the claimant to think about the other job over the weekend.

Later on May 10, the claimant's supervisor told the claimant that the person the claimant had replaced was going to return as the business office manager. This meant the claimant had to take the other job, activities director, to continue working for the employer. Again, the claimant asked to think about this over the weekend.

On Monday, May 13, the claimant told her supervisor she could not accept the activities director position because this job would not make her happy and she had no experience in this job. After the claimant declined to work as the activities director, the employer ended the claimant's employment.

The claimant established a claim for benefits during the week of May 12, 2013. After a fact-finding interview, the claimant waited for a determination. A determination was mailed to both the claimant and employer on May 31, 2013. The determination disqualified the claimant from receiving benefits.

When the claimant did not receive the determination or any benefits, she went to her local Workforce office on June 17 to find out why she was not yet receiving benefits. The claimant then learned about the May 31 determination. The claimant filed an appeal at her local Workforce office on June 17, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 filed her appeal after the June 10 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not receive the May 31 determination. Her failure to file a timely appeal was due to delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Section has legal authority to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence establishes the employer initiated the employment separation. 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 (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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or

3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant did not commit work-connected misconduct. The employer hired her as the business office manager and the claimant had no problems in this job. The employer ended the claimant's employment because the employee the claimant had replaced was returning to the job the employer had hired the claimant to do. This meant the claimant no longer had a job as the business office manager.

In the alternative if the claimant quit, she quit for reasons that qualify her to receive benefits. The employer asked the claimant to accept a job as the activities director even though the claimant had no experience in this position. The activities director job constitutes a substantial change in the claimant's job duties. 871 IAC 24.26(1). As a result of the substantial change, the claimant quit for reasons that qualify her to receive benefits. She is qualified to receive benefits as of May 12, 2013.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's May 31, 2013 determination (reference 01) is reversed. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal. The employer initiated the employment separation and discharged the claimant for business reasons, but not for reasons that constitute work-connected misconduct. As of May 12, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs