

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER L EBY
Claimant

APPEAL NO: 10A-UI-04720-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/18/09
Claimant: Appellant (1)

Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay
Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 2, 2010, reference 02, that held he was discharged for misconduct on December 21, 2009, and benefits are denied. A telephone hearing was held on May 13, 2010. The claimant participated. Shannon Jones, HR/Training Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the appeal is timely.

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on August 22, 1988, and last worked as a full-time forklift driver on December 21, 2009. The claimant received the employer policies that provide the reckless operation of power equipment resulting in an accident/event may result in termination.

The claimant received a coaching on January 8, 2009 for bulldozing pallets that resulted in an employer property damage loss of \$300. The policy is for forklift drivers to move one pallet at a time, and bulldozing is moving more than that amount.

On December 21, 2009, the claimant was bulldozing pallets (moving #4 at one time) in the warehouse that obstructed his vision. The claimant pinned an employee between his pallet load and another piece of equipment causing the associate to break his leg. The employer discharged the claimant for reckless operation of his forklift in light of the prior coaching for similar conduct.

The department mailed the decision to the claimant to his address of record on February 2, 2010, and he received it. The appeal deadline date is February 12. The claimant submitted his appeal to his local workforce center on February 12 who then faxed it to Unemployment Appeals on the same date. When the local office later learned the faxed-appeal was not received, it was re-faxed on February 26.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal.

The claimant timely submitted the appeal to the department, and the fax delay was due to department error.

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 administrative law judge further concludes the employer has established that the claimant was discharged for misconduct in connection with employment on December 21, 2009, for a repeated violation of company policy due to reckless operation of equipment.

The claimant knew the employer forklift operation policy due to a prior coaching, and his repeated violation for the same offense constitutes job disqualifying misconduct.

DECISION:

The department decision dated February 2, 2010, reference 02, is affirmed. The claimant filed a timely appeal. The claimant was discharged for misconduct on December 21, 2009. Benefits

are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs