

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A MALONE
Claimant

APPEAL NO. 07A-UI-07924-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN GAMES INC
Employer

**OC: 05/06/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 25, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 4, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Jennifer Coe participated in the hearing on behalf of the employer with a witness, Kari Hockemeier. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a press operator from February 4, 2000, to May 4, 2007. The claimant was informed and understood that under the employer's work rules, employees were to refrain from fighting or other conduct that may be dangerous to others.

On May 4, 2007, the claimant became upset with a coworker who was repeatedly coming to him asking about whether some paper was ready. The last time the coworker approached him about the paper, the claimant slugged the coworker two times in the shoulder. On May 7, 2007, the employer discharged the claimant for violating the employer's workplace violence policy.

An unemployment insurance decision disqualifying the claimant was mailed to the claimant's last known address of record on May 25, 2007. The decision stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by June 4, 2006.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on August 15, 2007, which is after the time period for appealing had expired. The claimant delayed in filing his appeal because he suffers from glaucoma and is not able to read well. He believed the decision disqualified him for a period of time instead of until he

earned requalifying wages and was unaware that he had the right to appeal the decision. Later, when he found out what the requalification requirements were, he filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

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.

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 his appeal late because he could not read the decision correctly due to his vision problems. In my judgment, he did not have a reasonable opportunity to file a timely appeal, and the appeal is deemed timely.

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

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant attempts to minimize his conduct, but whether the claimant hurt the other worker is not the issue. When a worker strikes another worker in the workplace, the potential exists for retaliation and escalation of the violence. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated May 25, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw