

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH M MCCANN
Claimant

APPEAL NO: 12A-UI-04993-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER CONSULTING
Employer

**OC: 10/23/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 16, 2012 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account potentially subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Cody Franzen, a staffing specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of March 18, 2012.

ISSUE:

Did the employer discharge the claimant from a job assignment for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of October 23, 2011. The claimant did not start working for the employer until January 2012. The employer, a temporary employment firm, assigned the claimant to a job on January 3, 2012. The claimant's supervisor at this assignment was not satisfied with the claimant's work performance. The client asked the employer to remove the claimant from this assignment. The claimant's last day of work at this assignment was March 16, 2012.

The claimant reopened her claim for benefits the week of March 18, 2012. The employer did not have another assignment for the claimant until April 2012. The claimant began working for the same client but for another supervisor on April 2, 2012.

On April 16, 2012, a representative's determination was mailed to the claimant and employer. The determination held the claimant qualified to receive benefits because she had been discharged for reasons that did not constitute work-connected misconduct. The determination informed the parties an appeal had to be filed or postmarked on or before April 26, 2012.

The claimant received the representative's determination within a couple days. Franzen did not know when the employer received the determination. The employer's operations department receives the mail and it is then distributed to the appropriate employee. Franzen received the determination because he worked with the claimant. When Franzen noticed the determination on his desk, he faxed an appeal on May 1, 2012.

REASONING AND CONCLUSIONS OF LAW:

The law states 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). 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). A party may appeal by sending a written appeal by mail, facsimile or in person at a local Workforce office. Iowa Code § 17A-12(9), 871 IAC 26.4(1).

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 employer's appeal was filed after the April 26, 2012 deadline for appealing expired.

Since the employer did not know when the employer initially received the determination, the employer did not establish a legal excuse for filing a late appeal. 871 IAC 24.35(2). The Appeals Section does not have jurisdiction to address the merits of the employer's appeal.

In the alternative, if the employer established a legal excuse for filing a late appeal, the claimant was discharged for unsatisfactory work performance. 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). The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of March 18, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

The employer is not one for 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 April 16, 2012 determination (reference 02) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of March 18, 2012, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw