

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AJANG M DUT
Claimant

APPEAL NO. 11A-UI-09721-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/12/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant, Ajang Dut, appealed an unemployment insurance decision dated July 7, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 23, 2011. The parties were properly notified about the hearing. Dut participated in the hearing. Eloisa Baumgartener participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did Ajang Dut file a timely appeal?
Was she discharged for work-connected misconduct?

FINDINGS OF FACT:

Ajang Dut worked full time for the employer as a production worker from September 27, 2004, to June 3, 2011. She was informed and understood that she could be discharged for fighting at work.

Dut and a coworker had repeated conflicts at work, and Dut had complained to supervisors about the woman's hostile attitude toward Dut. The conflicts, however, continued.

On May 27, 2011, Dut and the coworker got into a fight after the coworker had insulted her and asked her to fight. When the coworker scratched Dut's face, the claimant slapped her face and punched her. At that point, other employees broke up the fight.

The employer discharged Dut on June 3, 2011, for violating the rule against fighting.

An unemployment insurance decision was mailed to Dut's last-known address of record on July 7, 2011. The decision concluded she was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by July 17, 2011.

Dut never received the decision within the ten-day period for appealing the decision. She filed a written appeal on July 21, 2011, after she was informed by a Workforce Development representative that she had been disqualified.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Dut filed a timely appeal.

The law states that 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.

The next question is whether Dut 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). Dut did not get the decision and so she did not have a reasonable opportunity to file a timely appeal. The appeal is deemed timely.

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Dut willfully violated the work rule against fighting. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated July 7, 2011, reference 01, is affirmed. Ajang Dut is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs