

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA R TOVAR**  
Claimant

**APPEAL NO. 09A-UI-03562-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WASHINGTON COUNTY HOSPITAL**  
Employer

**OC: 01/25/09  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 20, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 31, 2009. Claimant participated. Employer participated through Tracy Ousey. Employer's Exhibit 1 was received.

**ISSUE:**

The issue is whether claimant's appeal is timely and if claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant received the decision on February 23, 2009 and submitted her appeal at the Washington, Iowa local office on February 26, 2009. The representative accepted the appeal and signed for it but did not date it. The appeal was forwarded to the Appeals Section in Des Moines where it was received on March 5, 2009.

Claimant most recently worked full-time as a CNA and was employed from April 24, 2008 until January 14, 2009 when she was discharged. On January 8 she was working the overnight shift and a coworker Deanne, confronted her after hearing her tell another coworker she called in sick on January 7 because she needed a night off. Deanne said she was left to work alone on that shift, asked her if she wanted a job where she was not called to work on her day off "why don't you go back to the factory?" Melissa heard her respond calling Deanne "racist," "fucking prejudice (sic) bitch" in front of coworker Becky and a patient. Employer obtained written statements from the coworkers and wanted to speak with claimant about her response to the report but she was a no-call/no-show for her shifts on January 10 and 11 according to supervisors Erin Jerrard and Bonnie Kester who have no record of her calling in sick. While in her doctor's office on January 13, the doctor called employer and explained she thought there was something going on with her at work. Employer agreed and indicated they wanted to talk

to her about it. The doctor replied that claimant was having a hard time emotionally, was being treated for depression, but was not taking prescribed medications. The doctor asked Ousey if claimant's job was in jeopardy and Ousey replied that it was and they were scheduled to "discuss it tomorrow." Claimant interpreted that as being fired so did not report for the meeting, contact the employer or report for her scheduled shift at 2:45 p.m. on January 14 or thereafter. Claimant had other attendance issues for a no-call/no-show on June 1, August 20, and August 30, 2008. She did not advise Tracy Ousey, Human Resources Director, that she was having trouble with another employee, Karen ,earlier in the year before she started working the night shift.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant filed an appeal in a timely manner but it was not dated by the local office representative or forwarded to the Appeals Section in a timely manner. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits. The administrative law judge concludes that she was.

Iowa Code § 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.

Employer's request was reasonable that claimant meet with a supervisor and human resources director about the complaint and provide a verbal and/or written response. Her failure to cooperate by reporting for the scheduled meeting or report for work thereafter in combination with her earlier history of absenteeism and warning constitutes job-related misconduct. Benefits are denied.

**DECISION:**

The February 20, 2009, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits. Benefits are withheld until such time as the claimant works in

and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css