

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**AMY PAYNE**  
Claimant

**APPEAL NO: 14A-UI-10458-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAPP BROS TRUCK STOPS INC**  
Employer

**OC: 07/20/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Amy Payne (claimant) appealed an unemployment insurance decision dated August 13, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Sapp Bros Truck Stops, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2014. The claimant participated in the hearing. The employer participated through Restaurant Manager Richard Andres and General Manager Brian Haggerty. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether the claimant voluntarily quit her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on August 13, 2014, and the appeal deadline was August 23, 2014. The claimant moved at the beginning of August 2014, and updated her address with the US Post Office but failed to update it with Iowa Workforce Development. She did not receive the decision within a timely manner but filed an appeal on October 7, 2014, after she became aware of the disqualification.

The claimant was hired as a full-time cashier at the fuel desk on February 7, 2014, and became the assistant restaurant manager on June 4, 2014. She continued in that position until her separation date on July 22, 2014. The claimant was issued a verbal warning on July 17, 2014, for arriving late and leaving early, for failing to complete assigned tasks, and for personal

business completed on work time. The employer did not have specific dates, times or other information and relied on information from co-workers. The employer did not provide the counseling form to the claimant.

No written warnings were issued to the claimant but she was suspended on July 20, 2014, for "erratic behavior." The co-workers reported the claimant was late for work, she was out walking in the parking lot looking at trucks and she told her co-workers she was the boss. The claimant explained that she was looking at a truck due to a complaint and she had the truck towed. She denied telling her co-workers she was in charge. The employer witnesses did not observe any of the issues which resulted in the suspension.

The employer tried to set up a meeting with the claimant to discuss her suspension since she could not return to work until after they met. The claimant said the meeting was scheduled on July 21, 2014, and she could not attend because she was sick. She sent the general manager an email asking to set up a meeting at another time but she never received a response. The claimant later called the corporate office and was advised she had been terminated as of July 22, 2014. The employer said the meeting was scheduled for July 22, 2014, and the claimant did not show for the meeting. She was considered to have voluntarily quit after she failed to contact the employer after that date.

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

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 unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

In the case herein, the claimant did not receive the decision within the ten-day time period allowed for the appeal. She did file an appeal immediately upon receiving information she had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not exhibit the intent to quit and did not act to carry it out. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties

and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on July 22, 2014, for failing to report to a meeting after she was suspended for erratic behavior. She explained that she did not attend the meeting because she was ill but requested another meeting without response from the employer.

Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* The employer failed to establish intentional wrongdoing. Benefits are therefore allowed.

**DECISION:**

The claimant's appeal is timely. The unemployment insurance decision dated August 13, 2014, (reference 01), is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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