

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE RIVAS**  
Claimant

**APPEAL NO: 14R-UI-08156-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05/11/14**  
**Claimant: Appellant (2)**

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

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 30, 2014 (reference 01) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A hearing was scheduled on July 10. When the claimant did not participate at the hearing, a decision was issued that dismissed his appeal. See decision for Appeal No. 14A-UI-06245.

The claimant appealed the decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter for a new hearing. See decision for Appeal No. 14B-UI-06245. This appeal was then scheduled for a hearing on August 29, 2014. The claimant participated at the hearing. Shannon Wehr, Human Resource Clerk, appeared on the employer's behalf. Ike Rocha interpreted the hearing.

When the new hearing was set up, the correct issues were not noted on the hearing notice. Both parties waived advance notice of the issues that would be addressed at the hearing and agreed they were prepared to address the correct issues, timeliness of appeal and the reasons for the claimant's employment separation, instead of whether the claimant was able to and available for work.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUES:**

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

## **FINDINGS OF FACT:**

The claimant started working for the employer in May 2011. The claimant worked full time.

The claimant started sending paperwork to immigration officials in June 2014 to renew his authorization to work in the United States. The claimant's authorization to work in the United States expired on March 9, 2014. The claimant did not get his paperwork indicating he was authorized to work after March 9 until May 1, 2014. The claimant learned the delay occurred because officials mailed his paperwork to an address in California.

Anytime the claimant received a letter from Immigration, he took the letter to the employer's office. When the claimant's work authorization expired on March 9, 2014 the employer could not allow him to work without proper documentation. The employer gave the claimant 30 days to produce his work authorization card. If the claimant did not have the proper documentation by April 9, 2014 he no longer had a job. On May 1, 2014 the claimant received his work authorization documentation stating he was authorized to work after March 9, 2014.

The claimant established a claim for benefits during the week of May 11, 2014. A May 30 determination was mailed to the claimant and the employer. The determination informed the parties the claimant was not qualified to receive benefits because he had been discharged for disqualifying reasons. The determination also informed the parties an appeal had to be filed or postmarked on or before June 9, 2014.

The claimant received the determination on or before June 9, 2014. The claimant did not understand the May 30 determination. Until he found someone to could translate the determination, he did not know what the determination said or that he could appeal. As soon as the determination was translated, the claimant went to his local Workforce office on June 17 and filed his appeal.

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

The law states that an unemployment insurance decision is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the June 9, 2014 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The facts establish the claimant did not have a reasonable opportunity to file a timely appeal because he did not know or understand the information on the May 30, 2014 determination, until someone translated the determination. As soon as the determination was translated, the claimant understood and went to his local Workforce office and filed his appeal on June 17. The claimant established a legal excuse for filing a late. The Appeals Bureau has legal authority to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented at the hearing, the claimant started filing paperwork in June 2013 to update or extend his immigration status to work in the United States. The claimant later understood he did not receive the necessary documents before his work authorization expired on March 9, 2014 because immigration officials mailed his authorization to work documents to the wrong address.

The employer could not allow the claimant to work after March 9, 2014, when he did not have authorization from immigration to work in the United States. The claimant and employer were caught in a Catch-22 situation. The claimant had no control when he would receive the necessary paperwork that authorized him to work in the United States. The evidence does not establish that the claimant disregarded the standard of behavior the employer had a right to expect him. The claimant made a timely and reasonable attempt to extend his work authorization. The claimant did not commit work-connected misconduct.

Even though the employer had business reasons for ending the claimant's employment, he did not commit work-connected misconduct. As for May 11, 2014 the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's May 30, 2014 (reference 01) determination is reversed. Even though the claimant filed a late appeal, he established a legal excuse for filing a late appeal. The Appeals Bureau has legal jurisdiction to address the merits of the claimant's appeal. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 11, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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