

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D SMELTSER
Claimant

APPEAL NO. 10A-EUCU-00452-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
Employer

OC: 05/24/09
Claimant: Appellant (2)

Section 96.6-2 – Timeliness of Appeals
871 IAC 24.35(2) – Appeal Delay
Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated April 16, 2010, reference 01, that held the he was discharged for misconduct on March 18, 2010, and benefits are denied. A telephone hearing was held on July 13, 2010. The claimant participated. The employer did not participate. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the appeal is timely.

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant worked as a full-time production employee from July 12, 2004 to March 18, 2010. After a lay-off period, the claimant returned to work. The claimant called his employer on March 16, 2010 to say he would be late to take his girlfriend to see a doctor. The employer discharged the claimant because it did not excuse the reason for being late. After Employer/Union review, the claimant received an excused tardy, and the employer allowed the claimant to return to work on June 1. The claimant ceased claiming benefits the week ending May 29. The employer did not call in for the hearing.

The claimant did not receive the department decision that denied him benefits. The claimant learned about it when he contacted the department on May 14, and he faxed an immediate appeal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal. The appeal delay was most probably due to a US Postal Service delivery error or a department error in mailing it.

Iowa Code section 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on March 18, 2010, because claimant's properly reported tardiness does not constitute misconduct.

Since the employer re-instated the claimant after Union review, it appears the tardiness on March 16 was for an excusable reason.

DECISION:

The decision of the representative dated April 16, 2010, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on March 18, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs