

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLAIMANT

APPEAL 19A-UI-06785-JC-T

**ADMINISTRATIVE LAW JUDGE
PUBLIC DECISION**

EMPLOYER

**OC: 05/19/19
Claimant: Appellant (2)**

Iowa Code § 235A – Child Abuse Information – access/redissemination to confidential information

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Admin. Code r. 871-24.32(9) –Disciplinary Suspension

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 11 2019 (reference 03) unemployment insurance decision that denied benefits.

The parties were properly notified of the hearing and a telephone hearing was held on September 19, 2019. The hearing was held jointly with Appeal 19A-UI-06786-JC-T. The claimant participated personally. The employer participated by way of a human resources manager. The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Shall the hearing record and decision be publicly disclosed?

Is the appeal timely?

Was the claimant suspended for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of May 19, 2019 in response to a disciplinary suspension with the employer on May 14, 2019. An initial decision dated June 11, 2019 (reference 03) was issued and mailed to the claimant. The decision denied benefits to the claimant based upon the reasons for her disciplinary suspension. The claimant received the decision within the prescribed period to appeal. During the appeal period, the claimant was also permanently separated from employment on June 18, 2019. The claimant called IWD and spoke to a representative on June 20, 2019. She was provided incorrect guidance. Thereafter, IWD issued an inconsistent decision (reference 06) which allowed benefits based upon the claimant's permanent separation. Then on August 21, 2019,

the claimant received an overpayment decision (reference 07) based upon the benefits she received prior to being denied during her disciplinary suspension. When the claimant contacted IWD a second time on August 15, 2019, she was informed she had been given incorrect information previously. She then filed her appeal on August 23, 2019 (Department Exhibit D-1).

The claimant was hired January 28, 2019 as an assistant childcare teacher. The claimant was trained on employer rules and procedures, including “conscious discipline”. The employer received a report from a parent regarding the claimant. State law required the employer to report the complaint. The claimant denied the allegations. The claimant was not permitted to work while suspended. She was subsequently discharged on June 18, 2019 (See reference 05) decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be addressed in this case is the effect of the confidentiality requirements of Iowa Code § 235A.

Iowa Code § 235A provides that confidentiality of “child abuse information” shall be maintained, except as specifically authorized. See Iowa Code § 235A.15(1). Iowa Code § 235A.13(2) provides:

“Child abuse information” means any or all of the following data maintained by the department in a manual or automated data storage system and individually identified:

- a. Report data
- b. Assessment data.
- c. Disposition data.

There is no exception under Iowa Code chapter 235A for either party to discuss or disclose “child abuse information”. Iowa Code § 235A must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code § 22.2(1) provides: “Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.”

The appeal documents, exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of “public record” under Iowa Code § 22.1-3. Iowa Code § 17A.12(7) provides that contested case hearings “shall be open to the public.” Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. Iowa Admin. Code r. 871-26.17(3).

In this case, it would defeat the purpose of Iowa Code § 235A of restricting redissemination to permit the confidential information to be disclosed to the general public. Therefore, the public decision in this case is issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the audio record, and any documents in the administrative file shall be sealed and not publicly disclosed.

For the reasons that follow, the administrative law judge concludes the claimant’s appeal shall be deemed timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 division 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 division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant in this case received the initial decision within the prescribed appeal period. The decision applied only to the claimant's suspension. During the appeal period, the claimant was also permanently separated from employment. She contacted IWD within the prescribed appeal period for guidance and was given incorrect information. She later received an overpayment decision and again contacted IWD, at which time she learned of the incorrect guidance. She filed her appeal within a reasonable period thereafter.

Agency error contributed to the claimant's late filing of the appeal. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was due to any Agency error or*

misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). It shall be accepted as timely.

The next issue in this case is whether the claimant's suspension May 14 - June 17, 2019 would disqualify her from the receipt of unemployment insurance benefits.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9).

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

The administrative law judge understands both parties are in an untenable situation because they are prohibited by law from presenting some evidence to support their respective positions on the suspension issue. However, the employer has the burden of proof in disciplinary suspension/discharge cases. While the employer may have been justified in suspending the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful misconduct or repeated negligence has been proven in this case. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated June 11, 2019, reference 03, is reversed. The appeal is timely. The claimant's suspension from employment effective May 14, 2019 was not due to job-related misconduct. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn