

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MOHAMED A MHDH**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL 21A-UI-09091-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Mohamed A. Mdhi, filed an appeal from the February 16, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits.

After proper notice, a first hearing was scheduled between the parties for June 16, 2021. The hearing was postponed by Administrative Law Judge, Elizabeth Johnson, at the claimant’s request. New notices of hearing were mailed June 15, 2021 for a July 15, 2021 hearing.

A telephone hearing was conducted on July 15, 2021. The hearing was held together with Appeals 21A-UI-09096-JC-T and 21A-UI-09093-JC-T. The claimant participated personally and was represented by Jeff Lipman, attorney at law. The employer, TPI Iowa LLC., stated at the time of hearing that it would not be participating. No representative from the IWD Investigations and Recovery Unit appeared and no documentation was submitted in lieu of participation.

The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Appeal letter) 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:**

Is the appeal timely?

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment in 2018 for the employer and worked as a full-time associate until he was discharged on December 8, 2020. Claimant stated he was told that his discharge was due to a “parking violation.” Claimant acknowledged being trained on employer rules and procedures at

the time of hire. He denied any warning or discipline prior to discharge. Claimant also stated he had recently been transferred to a new location before discharge.

Claimant indicated there was designated lots for employees to park, but that the parking lane paint was old and sometimes covered by sand. Claimant was called off the line during work approximately three days before he was fired. He was told to go move his car. Claimant was unaware that he parked somewhere he was not supposed to be, and denied parking in any spot that had signage stating not to park there or somewhere that was illegal (like a fire lane). Claimant moved his car as requested. A couple days later, he was called into the office and discharged by the employer.

An initial decision dated February 16, 2021 was mailed to claimant's address of record. Claimant does not check mail often unless he is expecting a bill or something. Claimant does not recall the day he checked his mail and learned of the decision. The decision contained a warning that an appeal was due by February 26, 2021. Claimant did not receive the decision within the appeal period. Claimant has limited English proficiency and called IWD as directed on the decision for guidance. Claimant was confused by the guidance given. He then contacted his attorney, Mr. Lipman, who helped him file an appeal. The appeal was mailed on March 26, 2021 (See Department Exhibit D-1).

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

### **The first issue to address is whether claimant's appeal can be accepted as timely filed.**

Iowa 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. See Iowa Code § 96.6(2).

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).

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). Claimant's appeal was postmarked (and therefore filed) on March 26, 2021, after the February 26, 2021 due date.

Claimant in this case did not receive the initial decision within the prescribed appeal period. When he did receive it, and acknowledging he has limited English proficiency, he called IWD as instructed on the decision, for guidance, and was given confusing information. He followed up with his attorney, who assisted him in the appeal. Claimant in this case made a good faith effort to follow up and file an appeal once learning of the unfavorable decision. The administrative law judge concludes claimant's delay in filing was compounded by *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). Therefore, the administrative law judge accepts the appeal as timely filed.

**For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.**

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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.

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden

of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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.

In this case, the undisputed evidence is that claimant was discharged for a single parking lot violation. Claimant had no prior warnings and was unaware he would be fired for a single incident. Based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged was an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated February 16, 2021, (reference 02) is **REVERSED**. The appeal is timely. Claimant was discharged but not for job-related misconduct. Benefits are allowed, provided he is otherwise eligible.



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Jennifer L. Beckman  
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July 26, 2021  
Decision Dated and Mailed

jlb/scn