

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON M SCHROEDER
Claimant

APPEAL 23A-UI-08551-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/12/23
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On September 7, 2023, employer Casey's Marketing Company filed an appeal from the April 25, 2023, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a hearing was scheduled for September 25, 2023. On that date, employer representative requested postponement to allow time for a witness to participate on employer's behalf. The request was granted. The parties were properly notified of the hearing, and a hearing was held by telephone conference call on October 6, 2023. Claimant Jason M. Schroeder participated. Employer participated through district manager Steve Rhodes. Department's Exhibits D-1 and D-2 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant's appeal timely?

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager from August 25, 2020, and was separated from employment on February 10, 2023, when he was discharged.

A disqualification decision was mailed to employer's last known address of record on April 25, 2023. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 5, 2023. The appeal was not filed until September 7, 2023, which is after the date noticed on the disqualification decision. Employer did not receive the decision in the mail. (Exhibit D-2). Upon learning of charges to its account resulting from claimant's filing of benefits, employer filed this appeal.

Employer maintains a policy prohibiting managers from sharing their personal passcode numbers for the timekeeping system with any other employee. It also maintains a policy prohibiting the falsification of timekeeping records. Claimant was aware of these policies.

Employer discharged claimant on February 10, 2023, for violating its policies prohibiting sharing personal passcodes and falsifying timekeeping records.

In early January 2023, claimant's supervisor, Steve Rhodes, discovered a first assistant manager had accessed systems he did not have passcodes to access. Upon investigation, employer learned claimant had given the assistant manager his personal passcode. Claimant admitted to doing so, and stated he was training the manager, and claimant was trained in the same manner when he was in training to become a manager. Employer told claimant that was a violation of its security policy and verbally warned claimant not to share his personal passcode again. Claimant did not share his passcode after that time.

Two incidents occurred in early February that also contributed to employer's decision to discharge claimant. On February 6, 2023, Mr. Rhodes contacted claimant's store and learned claimant was absent from the store and had left shortly after noon. Mr. Rhodes then contacted claimant because he needed to get his timesheet approved. Claimant asked him to clock him out at 4:00 p.m. for that day. Mr. Rhodes became concerned because he knew claimant was not in the store for a period of time, so he reviewed the security footage and learned claimant did not return to the store after 12:08 p.m. Mr. Rhodes did not contact claimant to find out why he told him he worked until 4:00 p.m. when he was not in the store. Claimant did work until 4:00 p.m. running errands and conducting business outside of the store. He met with school representatives regarding making pizzas available for the booster club. He also ran some other errands and completed his workday at 4:00 p.m.

On February 9, 2023, claimant left the store at 1:00 p.m. and went to another Casey's in town. The manager of that store informed Mr. Rhodes that claimant went home after leaving that store. Mr. Rhodes discovered claimant came back to the store at 6:00 p.m. to clock out for the day after he reviewed the security footage. He did not contact claimant to find out whether he was working offsite during that time. Claimant could not remember what errands he ran that day, but stated he never falsified his timecard and if he stated he was done working until 6:00 p.m. he was being truthful.

Mr. Rhodes had conversations with claimant in November and December 2022 because team members complained claimant was not always available when they wanted to communicate with him. Employer verbally warned claimant he was required to work 45 hours per week and to be available for his team members.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$8,816.00, since filing a claim with an effective date of March 12, 2023, for sixteen weeks between March 26, 2023, and July 22, 2023. Employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's appeal is timely. For the reasons that follow, the administrative law judge concludes employer's appeal is timely.

Iowa Code section 96.6(2) provides:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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. Bd. 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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

In this case, employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Employer appealed upon learning of charges to its account. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was discharged for misconduct. For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Employer provided two reasons for terminating claimant's employment. The first reason given for claimant's discharge is that he shared his personal passcode with a staff member in early January 2023.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

When claimant was discharged there was no current act of misconduct with regards to the sharing of passcodes. The incident in which claimant shared his passcode with a first assistant manager occurred one month prior to his discharge, and claimant had already received a verbal reprimand for the incident. Employer presented no evidence suggesting claimant again shared his passcode numbers after the occasion he did so in January. There must be a current act of misconduct to disqualify claimant from receiving benefits. In this case, there was none regarding the passcode numbers. Without a current act, the employer failed to meet its burden of proof of establishing disqualifying job misconduct for a violation of the policy relating to sharing of passcodes.

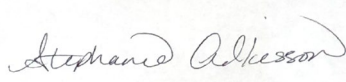
The second reason employer gave for discharge claimant is the falsification of timecards and inability to work 45 hours per week. Employer testified claimant was warned about working his full 45 hours each week. While this may be so, claimant's un rebutted testimony is that he was conducting business outside of the store when he indicated on his timecard he was working. There is no evidence claimant falsified his timecard as he was in fact working during the times he reported on his timecard. The fact that claimant was working outside of the store does not alter the fact that he was performing his job duties. At no point did employer ask claimant whether he was working during those periods to confirm that his timecard entries were accurate.

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Employer did not present any evidence that claimant engaged in job-related misconduct, as he did not falsify his timecards nor was there a current act of misconduct relating to sharing his passcode. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Benefits are allowed.

Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

DECISION:

The appeal is timely. The April 25, 2023, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.



Stephanie Adkisson
Administrative Law Judge

October 9, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.