

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BILLY J BRITCHER**  
Claimant

**PANAMA TRANSFER INC**  
Employer

**APPEAL NO: 14A-UI-11057-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/14/14**  
**Claimant: Respondent (2/R)**

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Iowa Code § 96.5(2)(a) – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment  
Iowa Code § 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Panama Transfer, Inc. (employer) appealed an unemployment insurance decision dated October 3, 2014 (reference 01) which held that Billy Britcher (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2014. The claimant participated in the hearing. The employer participated through President Dean Klaver, Dispatcher Bobby Sibert, and Safety Director Heath Richards. Department Exhibit One and Employer's Exhibit One were admitted into evidence.

**ISSUE:**

The issue is whether the employer filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether the claimant was discharged for work-connected.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A decision allowing benefits was mailed to the employer's last-known address of record on October 3, 2014. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 13, 2014. The employer did not receive the decision until October 20, 2014 and filed its claim on October 22, 2014, which is after the date noticed on the decision which allowed benefits.

The claimant worked as a full-time truck driver/delivery person from March 3, 2014 through September 15, 2014 when he was discharged after repeated customer complaints regarding his performance. The employer reviewed these complaints with the claimant and often directed him to return to the customer to pick up totes he had missed. The first complaint was that he hit a parts bin on April 15, 2014 and the second complaint occurred on June 18, 2014 due to issues with delivery times. A third and fourth complaint were filed on July 7, 2014 and again on July 11, 2014 for the claimant not picking up the driver totes. A complain on August 22, 2014 was reported from Roeder in Dubuque because the claimant did not pick up three pieces and a sixth complaint from Titan out of Grundy Center was received on August 25, 2014 after the

claimant did not pick up their totes. The final incident occurred on September 12, 2014 when the customer had surveillance recording of the claimant throwing freight out of the back of the trailer. The employer provided pictures of the packages strewn all across the parking lot.

The claimant filed a claim for unemployment insurance benefits effective September 14, 2014 and has received benefits after the separation from employment in the amount of \$3888. President Dean Klaver waited for the call for the fact-finding interview but it was never received. He called Iowa Workforce within a half hour and was advised they were running behind. Iowa Workforce never called the employer and the employer subsequently received a decision in the mail.

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

The 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. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

In the case herein, the appeal was not timely filed but the employer did not receive the decision within the ten-day time period allowed for the appeal. The employer did file an appeal immediately within two days after the receipt which allowed benefits. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant was discharged for work-related misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on September 15, 2014, for a repeated disregard of the employer's directives in carrying out his job duties. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer received had received six complaints of unacceptable job performance before the final incident. His continued disregard for the employer's interests demonstrates a deliberate disregard for the employer's interest. Work-related misconduct is established and benefits are therefore denied.

The claimant has received \$3888 in benefits as a result of this claim. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Participation, which can include by written participation under certain circumstances, is defined in 871 IAC 24.10.

In this case, the claimant has received benefits but was ineligible for those benefits. The matter of whether the employer was provided with an adequate opportunity to participate in the fact-finding interview must yet be determined. The fact-finding documents cannot be reviewed as of the date of this decision since they have not yet been scanned into the computer. The matter of determining the whether the overpayment is subject to collection based on the employer's participation, under Iowa Code § 96.3-7-b, is remanded to the Claims Bureau.

**DECISION:**

The employer's appeal is timely. The unemployment insurance decision dated October 3, 2014 (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3888.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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