

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L NELSON

Claimant

APPEAL NO: 11A-UI-00123-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11/14/10

Claimant: Respondent (1)

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

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 21, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Holly Carter, an unemployment insurance specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUES:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The employer assigned the claimant to a job in April 2010. The claimant worked as a file clerk at this assignment. During her assignment, the client or the employer talked to the claimant about reporting to work late. After the claimant understood it was a problem if she reported to work late, she corrected this problem.

The afternoon of November 16, 2010, the employer contacted the claimant and told her she no longer worked as a filing clerk at her assigned location. The client asked the employer to remove the claimant because her productivity was low and she used her cell phone at work. When the claimant asked why no one addressed these issues with her before, the employer's representative had no answer. The claimant got the impression the employer did not try to find out why the client had not expressed concerns before ending the claimant's assignment early. The claimant was upset with the employer and immediately started looking for work with another employer.

The claimant established a claim for benefits during the week of November 14, 2010. On December 21, 2010 a representative's determination was mailed to the claimant and employer holding the claimant qualified to receive unemployment insurance benefits. The determination also informed the parties an appeal had to be filed or postmarked on or before December 31, 2010.

The employer's corporate office received the December 21 determination on December 27, 2010. Corporate employees were supposed to daily mail unemployment insurance paperwork, but in this case the December 21 determination was not mailed immediately. Carter, the employer's representative, did not receive the December 21 determination from the corporate office until January 4, 2011. As soon as Carter received the determination, she immediately filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the employer's appeal was filed after the December 31 deadline for appealing expired.

The next question is whether the employer had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the employer had a reasonable opportunity to file a timely appeal, but did not because corporate office employees failed to forward the December 21 determination to Carter in a timely manner.

The employer's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The employer's corporate personnel failed to follow procedures and also failed to make sure Carter received the determination in time to file a timely appeal. Since the employer did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to address the merits of the employer's appeal.

In the alternative, if the employer established a legal excuse for filing a late appeal, the evidence establishes the employer discharged the claimant from the assignment because the client told the employer to do so. Since the claimant did not complete the assignment, Iowa Code § 96.5(1)j does not apply.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an

unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer did not establish that the claimant committed work-connected misconduct. The employer followed its client's directive and ended the claimant's assignment even though she had corrected the problem she had been told about - reporting to work late. Under either scenario, establishing a legal excuse for filing a late appeal or not, the claimant is qualified to receive benefits as of November 14, 2010.

DECISION:

The representative's December 21, 2010 determination (reference 01) is affirmed. The employer did not file a timely appeal and did not establish a legal excuse for filing a late appeal. In the alternative, if the employer established a legal excuse for filing a late appeal, the employer discharged the claimant for reasons that do not amount to work-connected misconduct. As of November 14, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs