

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LEVELLE M HORNE
Claimant

COLLIS INC
Employer

APPEAL NO. 14A-UI-12379-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/05/14
Claimant: Appellant (2/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 29, 2014, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 18, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from July 2014 to October 8, 2014. His supervisor was the shift supervisor Tina Koonce.

The claimant was absent from work because his five-month old child was sick on October 6 and 7. He called in and notified the employer about his absences.

When the claimant reported to work on his next scheduled day of work, Koonce sent him home. The claimant believed his employment had been terminated. He filed a claim for benefits effective October 5, 2014.

A short time later, the claimant contacted Michele Hubner, in human resources, and explained what had happened. He was told that he would have to reapply for employment and start over because his employment had been terminated.

The claimant returned to work for the employer at the end of October but after about a week, he was terminated. He continued to file weekly claims and did not report the second separation from employment.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base-period employer on the claim.

An unemployment insurance decision was mailed to the claimant's last-known address of record on October 29, 2014. The decision concluded he voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by November 8, 2014.

The claimant received the decision within the ten-day period for appealing the decision. On November 7, 2014 he faxed the appeal from a Hy-Vee store to the Appeal Bureau, but through no fault of the claimant it was not received. When he had not received notice of the appeal hearing, he inquired at his local Workforce Development office and found out the appeal had not been received. He immediately filed a written appeal on December 1, 2014.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

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 failure to file a timely appeal was likely due to an Agency fax error, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. I believe the claimant's testimony that he faxed the appeal on time and thought it had properly transmitted. The appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The preponderance of the evidence establishes the claimant was discharged and never intended to quit employment.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

The preponderance of the evidence shows the claimant was discharged after he missed work for two days due to a family medical emergency and that he notified the employer about his absences. No willful and substantial misconduct has been proven in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base-period employer on the claim. If the employer becomes a base-period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

There was a second separation that occurred in case in November 2014 that has not been adjudicated. Since the employer was not informed that this separation would be at issue in this appeal, this matter must be remanded to the Agency to hold a fact-finding interview.

DECISION:

The unemployment insurance decision dated October 29, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits effective October 5, 2014; if he is otherwise eligible. The matter holding a fact-finding interview and adjudicating the separation that occurred in November 2014 is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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