

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUAN D RABANALES-OCHOA
Claimant

APPEAL NO. 14A-UI-09265-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS
Employer

OC: 07/20/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 20, 2014, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 25, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Olga Ayala. John Carreras 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 for the employer full time as a production worker from September 10, 2013, to May 22, 2014. He was informed and understood that under the employer's work rules, employees were required to have a valid employment authorization document (EAD) to remain employed by the employer. The employer sends out reminders to employees about their need to renew their EAD before it expires.

The claimant's EAD expired on May 22, 2014. He filed his application for renewal of the EAD at the end of January 2014. The employer reminded the claimant about his need to renew his EAD on February 4, 2014.

Through no fault of the claimant, he did not receive his EAD in the mail before it expired on May 22, 2014. Because federal law prohibits employers from employing workers without a valid EAD, the employer discharged the claimant on May 22.

The claimant did not receive his EAD in the mail until July 2014. The EAD was renewed effective May 12, 2014. The claimant contacted the employer but was informed that he could not be reinstated to his job because it was beyond the 45 days allowed under the employer's policy.

An unemployment insurance decision was mailed to the claimant's last-known address of record on August 20, 2014. The decision concluded he was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 30, 2014.

The claimant never received the decision. He found out from his local Workforce Development Center that he had been disqualified and immediately appealed the decision on September 8, 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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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).

The next question is whether the claimant 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 claimant did not have a reasonable opportunity to file a timely appeal because he did not receive the decision. He appealed the decision immediately after he found out he had been disqualified from benefits. The appeal is deemed timely.

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

You cannot file for a renewal EAD more than 120 days before your original EAD expires. See <http://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document>. The claimant applied for renewal of his EAD in plenty of time to receive it by the renewal deadline. It was not his fault that the renewal was delayed.

DECISION:

The unemployment insurance decision dated August 20, 2014, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs