IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDY L CHAPMAN
Claimant

FAMILY VIDEO MOVIE CLUB INC
Employer

APPEAL NO. 08A-UI-00052-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/31/06 R: 04
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Family Video Movie Club, Inc. filed an appeal from a representative's decision dated December 21, 2007, reference 07, which held that no disqualification would be imposed regarding Randy Chapman's separation from employment. After due notice was issued, a hearing was held by telephone on January 17, 2008. Mr. Chapman participated personally. The employer participated by Tony Starr, District Manager.

ISSUE:

The first issue in this matter is whether the employer filed a timely appeal. If the appeal is determined to be timely, the issue then becomes whether Mr. Chapman was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to the employer on December 21, 2007. It was not received until December 31, the date on which an appeal was due. The employer filed its appeal by fax on January 2, 2008.

Mr. Chapman was employed by Family Video from September 15 until December 6, 2007. He was employed full time as a customer service representative. The final incident that triggered his discharge was that he allowed a video to be rented before its release date. The employer is contractually obligated not to rent certain new release videos before a specified date, the "pre-street" date. The videos do not contain any signage indicating they have a "pre-street" date. The "pre-street" videos are stored either in the back room or in a tub behind the counter. Customers are able to reach into the tub behind the counter without actually being behind the counter. Mr. Chapman rented a "pre-street" video on November 30, before its authorized date. The video was taken from behind the counter by the customer without Mr. Chapman's knowledge. As a result of this incident, he was discharged on December 6, 2007.

In making the decision to discharge, the employer also considered the fact that Mr. Chapman had received a written warning on December 1. On November 27 and 28, he failed to scan in three returned videos. It is necessary to scan in the returned movies so that customers are not erroneously charged for additional days and to ensure accuracy of the store's inventory. Mr. Chapman's failure to properly scan on November 27 and 28 resulted in the warning of December 1.

REASONING AND CONCLUSIONS OF LAW:

For reasons cited herein, the administrative law judge concludes that the employer's appeal should be deemed timely filed within the intent and meaning of Iowa Code section 96.6(2). The decision allowing benefits to Mr. Chapman was not received until the date the appeal was due. Given that the decision was mailed during the Christmas holiday season, when the postal service usually experiences a higher volume of mail, it is very possible that the decision was delayed through no fault of the employer. The administrative law judge considers the appeal timely and, therefore, there is jurisdiction to rule on the merits of Mr. Chapman's separation.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The incidents that caused Mr. Chapman's discharge do not, either singly or in combination, constitute disqualifying misconduct. The administrative law judge is satisfied that he did not knowingly rent the "pre-street" video. It was taken from behind the counter by a customer without Mr. Chapman's knowledge. Since the video did not contain anything to alert him to the fact that it was a "pre-street" video, his conduct in renting it to a customer was not deliberate misconduct.

Mr. Chapman did neglect to scan three videos on November 27 and 28. However, his actions represented only isolated instances of negligence and not an intentional disregard of the employer's standards. Although Mr. Chapman may have been an unsatisfactory employee, the evidence failed to establish substantial misconduct as is required for a disqualification from benefits. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated December 21, 2007, reference 07, is hereby affirmed. Mr. Chapman was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/pjs