IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

NICOLE M MAJEWSKI Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL 21A-UI-20482-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/30/21** **Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Nicole M Majewski, the claimant/appellant, filed an appeal from the August 18, 2021, (reference 02) unemployment insurance decision that denied benefits based on a June 3, 2021 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2021. Ms. Majewski participated and testified. The employer did not register for the hearing and did not participate.

ISSUES:

Is Ms. Majewski's appeal filed on time?
Was Ms. Majewski discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Majewski at the correct address on August 18, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 28, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. August 28, 2021 was a Saturday; therefore, the deadline was extended to Monday, August 30, 2021.

Ms. Majewski did not receive the decision. On September 10, 2021, Ms. Majewski learned from her RESEA worker that she had been denied benefits. Ms. Majewski filed an appeal online on September 13, 2021. The appeal was received by Iowa Workforce Development on September 13, 2021.

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Majewski began working for the employer on January 18, 2010. She worked as a full-time supervisor. Her employment ended on June 3, 2021.

Ms. Majewski did not attend work the week of May 24-28, 2021 because she had COVID-19 symptoms. Ms. Majewski's manager knew that she was out of work and checked on her while she was out of work. Ms. Majewski returned to work the following week with a doctor's note excusing her from work the previous week. The employer's human resources staff asked Ms. Majewski why she was a No-Call/No-Show the previous week. Ms. Majewski told the human resources staff that she was not a No-Call/No-Show because her manager knew the situation, and she had a doctor's note excusing her from work. The employer did not count the absences as No-Call/No-Shows.

One time, Ms. Majewski was out of work for a week on vacation leave. Another supervisor told Ms. Majewski's manager that Ms. Majewski did not complete time sheets for the employees on her team. When Ms. Majewski returned to work her manager told her that she would be suspended for not completing the time sheets. Ms. Majewski explained that she, in fact, had done the time sheet. Ms. Majewski's manager issued her a written warning instead of suspending her. Ms. Majewski's manager also wrote her up because she left work instead of work overtime for multiple days in a row.

Toward the end of her employment, Ms. Majewski felt that her manager was not treating her fairly. Her manager would also pull on her smock whenever he needed her to do something. Ms. Majewski filed a complaint about her manager with human resources about a week before the employer terminated her employment.

On June 3, 2021, the employer terminated Ms. Majewski's employment for unexcused absences, for previous write ups, and because she did not treat other employees with dignity and respect. Ms. Majewski suspected, but did not know for certain, that the dignity and respect issue was related to an outside-of-work issue she had with another employee. The other employee told the employer that they did not feel comfortable coming to work because of Ms. Majewski.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Majewski's appeal was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

> 1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
>
> (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

> (b) If transmitted via the State Identification Date Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
>
> (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

> 2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Majewski did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Majewski filed her appeal three days after she learned that she had been denied benefits. Ms. Majewski's appeal was filed on time.

The administrative law judge further concludes Ms. Majewski was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or

> wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

> (8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App.

1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In this case, the employer did not participate in the hearing and provided no evidence of misconduct on the part of Ms. Majewski. The issues Ms. Majewski testified to regarding why the employer ended her employment also do not establish misconduct. Since the employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct, benefits are allowed

DECISION:

Ms. Majewski’s appeal was filed on time. The August 18, 2021, (reference 02)) unemployment insurance decision is reversed. Ms. Majewski was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

December 7, 2021
Decision Dated and Mailed

dz/scn