

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PANTHER M DENG**  
Claimant

**APPEAL NO. 13A-UI-05765-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 04/07/13**  
**Claimant: Appellant (1)**

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 May 3, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 28, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Magok Alim. Danielle Williams participated in the hearing on behalf of the employer.

**ISSUES:**

Was the appeal in this case filed timely?  
Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from October 1, 2012, through March 8, 2013. She worked as a production worker on a shift from 5:00 a.m. to 5:00 p.m., Wednesday through Friday. The claimant had received seven warnings for being late for work, including a final warning on February 28, 2013, that warned the claimant that if she continued to be late for work she would be discharged.

The claimant punched in three minutes after her start time on March 8, 2013. The employer discharged the claimant on March 8 for repeated tardiness.

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 3, 2013. The decision concluded she 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 May 13, 2013.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on May 15, 2013, which is after the time period for appealing had expired. The claimant delayed in filing her appeal because English is not her primary language and she did not understand that she had a deadline of May 13 to file her appeal.

## **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 section 96.6-2.

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). I concluded the claimant did not have a reasonable opportunity to file a timely appeal due to language difficulties. Her 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 section 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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The claimant was repeatedly late for work; she was warned about her tardiness but continued to be late for work, including her final day. She has provided no legitimate excuse for her habitual tardiness.

**DECISION:**

The unemployment insurance decision dated May 3, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css