

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL KASTRUP**  
Claimant

**DOLGENCORP LLC**  
Employer

**APPEAL 20A-UI-11509-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/07/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Michael Kastrup (claimant) appealed a representative's September 3, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Dolgencorp (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 12, 2020, before Administrative Law Judge Julie Elder. The claimant participated personally. The employer participated by Mike Peckis, District Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

A decision was issued on November 20, 2020. That decision was vacated on December 1, 2020, due to a jurisdictional issue.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 25, 2018, and at the end of his employment, he was working as a full-time store manager. He was required to staff the store, make certain product was stocked on the shelves, and follow store policies.

The district manager noticed the claimant had issues with scheduling staff so that product was stocked. Pallets of product were in the backroom. The claimant had unfilled position. Employees did not appear for shifts and he did not update the schedule to show the claimant was working those shift. Twice the district manager had extra employees come in and help

stock the shelves at the store but things fell in disarray again. The claimant did not delegate duties of stocking or covering shifts to assistant managers.

The claimant also had instances of not appearing for work on time. He was suppose to be at work before the time the store opened. On May 14, 2020, the employer issued the claimant two final written warnings. One warning was issued for tardiness without notice to the district manager. The other warning was for three "failed save audits" or store conditions. Both final warnings were signed by the claimant. The employer notified the claimant in each warning that further infractions could result in the claimant's separation from employment.

On May 29, 2020, the claimant arrived at the store at 8:17 a.m. He knew he was supposed to be at work by 7:45 a.m. or notify the district manager. The claimant had vehicle issues but did not notify the district manager. The district manager visited the store and found the shelves empty and pallets of product in the back. On June 4, 2020, the employer terminated the claimant for issues related to attendance and store conditions.

The claimant moved and updated his address with the agency. The person at the agency did not put the address in the computer. A disqualification decision was mailed to the claimant's former address of record on September 3, 2020. The claimant did not receive the decision until September 16 or 17, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 14, 2020. The claimant filed his appeal on September 17, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the decision as soon as he received it. Therefore, the appeal shall be accepted as timely.

The next issue is the claimant's separation from employment.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

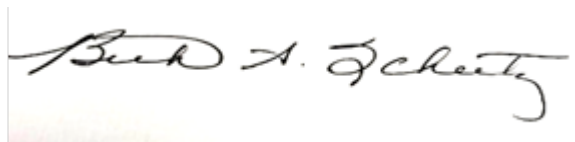
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions to stock shelves and show up for work on time. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The September 3, 2020, reference 01, decision is affirmed. The claimant's appeal is determined to be timely. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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Beth A. Scheetz  
Administrative Law Judge

December 21, 2020  
Decision Dated and Mailed

bas/scn