

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ADAM C FANKHAUSER
2519 CLARKSON AVE #A-14
DES MOINES IA 50310-5890

COMCAST SPECTACOR
GLOBAL SPECTRUM
3601 S BROAD ST
PHILADELPHIA PA 19148-5250

Appeal Number: 06A-UI-07053-CT
OC: 05/28/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Adam Fankhauser filed an appeal from a representative's decision dated June 15, 2006, reference 01, which denied benefits based on his separation from Global Spectrum. After due notice was issued, a hearing was held by telephone on July 26, 2006. Mr. Fankhauser participated personally. The employer participated by Barbara Craig, Human Resources/Payroll Clerk.

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 Mr. Fankhauser at his address of record on June 15, 2006. He moved to Fort Dodge at about the same time and did not receive the decision. He did not learn of the disqualifying decision until he was at his local office on or about July 10, 2006. His appeal was received July 10, 2006.

Mr. Fankhauser began working for Global Spectrum on July 11, 2005 as a full-time building attendant. He usually worked at the Polk County convention complex and Wells Fargo Arena. His hours varied and depended on which events he was needed for. The employer provides a stack of printed work schedules at the Wells Fargo Arena for that job site. Employees copy down the written schedule at the convention complex. Mr. Fankhauser's last day of work was May 27. He was scheduled to work on May 28 and May 29 but did not report on either date. He did not call the employer on either date to advise that he would be absent. The employer's policy provides that two consecutive unreported absences will be grounds for termination.

When Mr. Fankhauser returned to work after May 29, he was notified of his discharge. He told the employer he missed the two days of work because he did not have a schedule. However, he did not attempt to contact anyone to find out when he was to work. Mr. Fankhauser had received a verbal warning in September of 2005 after he left work 1.5 hours early without permission. He had received a written warning for the same infraction in March of 2006 after he left work 1 hour early without having his work completed.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Fankhauser's appeal should be considered timely filed. His testimony on the issue was confusing and sometimes contradictory. However, records of Workforce Development do reflect that he changed addresses. He moved from his address of record at about the same time as the decision was issued. For this reason, he did not receive the decision and could not have filed an appeal by the due date as required by Iowa Code section 96.6(2). He acted reasonably in filing an appeal as soon as he learned of the decision on July 10, 2006. For the above reasons, the appeal shall be deemed timely filed.

The next issue is whether Mr. Fankhauser was separated from employment for any disqualifying reason. Although the employer considers him to have quit pursuant to the terms of its policy, the administrative law judge concludes to the contrary. In order to find a quit in the unemployment context, there must be evidence of an intent to sever the employment relationship accompanied by some overt act of carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The fact that Mr. Fankhauser returned to the workplace on May 30 is indicative of an intent to remain in the employment. Because it was the employer's decision that he could not remain, the separation is considered a discharge.

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). Mr. Fankhauser was absent from work on two consecutive days without notice to the employer. The fact that he did not have the work schedule did not prevent him from calling someone to find out when he was to work or from simply showing up at the workplace at a time he might usually report. The work schedule was made available to

Mr. Fankhauser and it was his responsibility to either have a copy made or to copy it down by hand. Failing that, it was his responsibility to check with a supervisor to see when he was scheduled to work. His failure to report for work or contact the employer for two consecutive days constituted a substantial disregard of the standards the employer had the right to expect.

Mr. Fankhauser already knew that his continued employment was in jeopardy by virtue of the warnings he had received for leaving work early without permission and without completing his work. Given the warnings, he knew or should have known that not showing up for work with no notice to the employer might cause him to be discharged. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 15, 2006, reference 01, is hereby affirmed. Mr. Fankhauser was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs