

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD A JOHNSON
Claimant

APPEAL NO. 09A-UI-17517-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACKHAWK FLEET INC
Employer

**Original Claim: 01/04/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's July 6, 2009 decision (reference 01) that disqualified him from receiving benefits, and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on December 31, 2009. The claimant participated in the hearing. Dan Sorenson, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2006. The claimant worked as a full-time deck hand. The employer requires employees who are injured on the job to report the injury to the captain. The captain then files a first report of injury so the employer can send the employee to the employer's workers' compensation physician.

The claimant's last day of work for the employer was May 25, 2009. On May 26, 2009, the claimant notified the employer he was unable to work because he was ill. The claimant was scheduled to work on May 27, and 28, and June 4, 2009. Sorenson tried unsuccessfully to contact the claimant on May 26 and 27 to find out what was wrong with the claimant. According to the employer's records, the employer did not have any contact with the claimant again until June 4, 2009, at 11:00 a.m., even though the claimant was scheduled to work at 5:30 a.m. When the claimant had not called or reported to work on May 27, and 28, and June 4, the employer concluded the claimant had voluntarily quit his employment by abandoning his job and ended his employment.

On May 26, the claimant thought he told an assistant, Jeanie that he had a doctor's appointment the next day. When the claimant went to his appointment, his physician restricted him from doing any work, because he had had a hernia. The claimant learned he needed surgery and would not be able to work for six weeks. The claimant's physician did not release the claimant to work until July 10, 2009. The claimant did not file a first report of injury and the claimant's hernia operation was not covered by the employer's workers' compensation insurance.

The claimant established a claim for benefits during the week of January 4, 2009. He reopened his claim the week of June 7 and August 2, 2009. On July 6, 2009, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not qualified to receive unemployment insurance benefits as of May 25, 2009, because he had voluntarily quit his employment.

Although the decision was mailed to the claimant's address of record in July and the claimant did not have problems receiving his mail, the claimant did not receive a copy of this decision until after he appealed a November 13, 2009 overpayment decision. The claimant filed and received benefits for the weeks ending August 8 through November 7, 2009. The claimant filed an appeal on November 19, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the July 16, 2009 deadline for appealing expired.

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). The evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal, because he did not receive the July 6, 2009 decision. This conclusion is supported by the fact the claimant received benefits from August 2 through November 7, 2009.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the claimant's delay in filing an appeal. Even though the claimant did not file a timely appeal, he established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the employer initiated the employment separation and discharged the claimant as of June 4, 2009.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant's physician restricted him from working because he needed surgery to repair a hernia, the claimant failed to properly notify the employer he was unable to work as scheduled on May 27, and 28, and June 4. The claimant did not notify the employer that he was unable to work his shift at 5:30 a.m. these days. Even after the claimant went to his doctor and learned he was restricted from working, the claimant failed to timely notify the employer about his medical condition or even ask if he was eligible for a medical leave of absence. The facts indicate the claimant did not report his "work-related" injury to the captain so paperwork for a workers' compensation claim could be started. Under these facts, the claimant's failure to properly notify the employer he was unable to work for three consecutive days amounts to an intentional and substantial disregard of the standard of behavior the employer has right to expect from an employee. The employer discharged the claimant for work-connected misconduct: As of August 2, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's July 6, 2009 decision (reference 01) is affirmed. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons constituting work. The claimant is disqualified from receiving unemployment insurance benefits as of August 2, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charge

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw