

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE D DANKS
Claimant

APPEAL NO. 10A-UI-03091-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 08/23/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed a representative's February 12, 2010 decision (reference 04) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on March 31, 2010. The claimant participated in the hearing. The employer notified the Appeals Section that no one on the employer's behalf planned to participate in the hearing. Based on the evidence, the arguments of the claimant, 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2009. The employer hired the claimant to work as a part-time cashier and in customer service. When the claimant applied for the job, she told a human resource representative about a pending criminal charge she had. The employer's human resource representative told the claimant how to complete the application form.

The criminal charge against the claimant was ultimately dismissed. In January 2010, the employer received a call from a person who incorrectly reported the claimant was a convicted felon. The employer talked to the claimant and her attorney. Although the claimant's attorney told the employer and provided paperwork showing that all charges against the claimant had been dismissed, the employer discharged the claimant in early January 2010 because she had not provided some documentation to the employer in time.

The claimant reopened her claim on January 3, 2010. On February 12, 2010, a decision was mailed to the claimant at a Knoxville address. The claimant moved to her current address in

Leighton on February 5, 2010. The claimant had her mail forwarded. The representative's decision held the claimant was not qualified to receive unemployment insurance benefits. The decision also indicated the decision was final unless an appeal was filed on or before February 22, 2010.

Although the claimant had her mail forwarded, she did not receive any mail from her Knoxville address for at least two weeks. The claimant did not receive the February 12, 2009 decision before she went to her local Workforce office on February 25, 2010. The claimant went to her local Workforce office to find out why she did not have any money or benefits on her debit card that she could withdraw. At her local Workforce office she learned she had been held disqualified from receiving benefits based on the reasons for her employment separation. The claimant filed her appeal at her local Workforce office on February 25, 2010.

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 deadline February 22, 2010 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 she did not receive it from the mail that was forwarded from Knoxville.

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 delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, 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 an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

The employer may have had business reasons for discharging the claimant. The evidence does not establish that the claimant committed any work-connected misconduct. Therefore, as of January 3, 2010, the claimant is qualified to receive benefits.

During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's February 12, 2010 decision (reference 04) is reversed. The claimant established a legal excuse for filing a late appeal, so the Appeals Section has legal jurisdiction to address the merits of her appeal. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 3, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw