

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NDAYISABA ERIC

Claimant

APPEAL NO: 11A-UI-06061-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/23/11

Claimant: Appellant (2/R)

Iowa Code § 96.5(2)a – Discharge

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 9, 2011 determination (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 qualify him to receive benefits. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. The employer did not respond to the message left about contacting the Appeals Section if they planned to participate in the hearing. Manzi Lcyaliho interpreted the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds that based on the reasons for his employment separation, the claimant is not disqualified from receiving benefits.

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 November 2007. The claimant worked full time in the ham bone department. The claimant went to a doctor for medial issues. The doctor restricted him from working in mid-August 2010. The employer gave the claimant a medical of leave of absence from August 16 through December 20, 2010.

The claimant was not released to return to work in December. His doctor did not release him to work until after December 2010. The claimant did not understand that he would not have a job if he was unable to return to work on December 20, 2010. The claimant's physician did not release him to work until 2011.

When the claimant did not return to work in December, the employer did not consider the claimant an employee by late December 2010. The claimant established a claim for benefits during the week of January 23, 2011. On March 9, 2011, a representative's determination was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of January 23, 2011. The determination informed the parties that this was the final decision unless an appeal was filed or postmarked on or before March 19, 2011.

The claimant received the representative's determination but did not understand what it says because he does not read English. The claimant had a friend translate the March 9, 2011 determination. The claimant understood he needed to wait until he received a doctor's release before he could do anything. After the claimant received his doctor's release that he could return to work on April 22, he contacted the employer and learned he no longer worked for the employer. After talking to the employer, the claimant then went to his local workforce office and filed an appeal on May 2, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 March 21, 2011 deadline for appealing expired. (Since March 19 is a Saturday, the deadline to appeal is automatically extended to Monday, March 21, 2011.

Since the claimant does not read and understand English, he relied on a friend to translate the March 9 determination. It is not known if the deadline to appeal was explained to the claimant or that the claimant's friend understood the deadline. It must be assumed the deadline to appeal was not explained because the claimant believed he had to wait for his doctor to release him to work, which did not occur until April 22, 2011. Given the claimant's limited ability to understand the determination written in English, he established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's 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 do not establish the claimant voluntarily quit his employment. Instead, he did not return to work on December 2010, because his physician had not released him to work. Based on the evidence presented during the hearing, the employer ended the claimant when he was unable to return to work at end of his medical leave of absence.

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 evidence does not establish that the claimant committed work-connected misconduct. Instead, his job ended because his physician did not release him to return to work until April 22, 2011. Based on the reasons for his employment separation, the claimant is qualified to receive benefits.

Since the claimant has filed weekly claims since the week ending January 29, 2011, but testified his physician did not release him to return to work until April 22, 2011, the issue of when the claimant is able to and available for work will be remanded to the Claims Section to determine. After the claimant receives this decision, he should provide a copy of any work restrictions or work releases his doctor has given to him since December 20, 2010. The claimant should also be prepared to let his Workforce representative know what jobs he has been applying for and when he started looking for work.

DECISION:

The representative's March 9, 2011 determination (reference 01) is reversed. The claimant did not file a timely appeal, but 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 ended his employment for business reasons, but the claimant did not commit work-connected misconduct. The reasons for the claimant's employment do not disqualify him from receiving benefits. The claimant is qualified to receive benefits as of January 23, 2011, provided he meets all other eligibility requirements. The

employer's account may be charged for benefits the claimant receives. An issue of whether the claimant is able to and available for work and when is **Remanded** to the Claims Section to determine. The claimant should provide a copy of work releases his doctor gave him on or before April 22, 2011, and what jobs he has been applying for.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs