

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO C MACIAS
Claimant

APPEAL NO: 14A-UI-04536-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DARLING INTERNATIONAL INC
Employer

OC: 03/09/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 17, 2014 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the May 20 hearing. Bob Bushnell and Tom Sater, the assistant plant superintendent, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

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 reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant worked less than a year for the employer. He worked as a full-time driver/laborer on the midnight to 8 a.m. shift. Rob Miller supervised the claimant.

In early December 2013, the claimant received a three-day suspension for failing to report an accident. The claimant understood his job was in jeopardy after he received the three-day suspension.

On March 7, 2014, Miller asked another driver/laborer, Cisco, to tell the claimant he was to report to work at 8 p.m. instead of midnight that night. The employer wanted all employees to report to work early for a mandatory training. When Cisco told the claimant he was to report to work at 8 p.m. instead of midnight, the claimant did not believe him. In the past, supervisors have personally told the claimant when he was to report to work early or stay late. It was unusual for Cisco to tell the claimant to report to work early. Cisco did not tell the claimant that everyone was to report to work at 8 p.m. The claimant did not check with any supervisor to find out if he was to report to work at 8 p.m. or not.

On March 7, the claimant reported to work at midnight, his regular starting time. When the employer asked him, the claimant admitted that Cisco told him to report to work at 8 p.m. instead of midnight. The employer discharged the claimant on March 10 because he failed to report to work early or at 8 p.m. on March 7.

The claimant established a claim for benefits during the week of March 9, 2014. On April 17, 2014, a determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits. The determination also informed the parties an appeal had to be filed on or before April 27. The claimant does not know when he received the determination. He does not know how long he had the determination before he talked to a Workforce representative. He did not understand what the April 17 said or meant until he talked to a Workforce representative. The claimant filed his appeal at his local Workforce office on April 29, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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); *Beardsley v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the April 28 deadline for appealing expired. (Since April 27 was a Sunday, the deadline to appeal was automatically extended to April 28, a Monday.)

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence does not establish if the claimant had a reasonable opportunity to file a timely appeal or not.

The facts indicate the claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The claimant did not file a timely appeal because he did not understand what the April 17 said or meant. Since English is not the claimant's primary language, he established a legal excuse for filing a late appeal. The Appeals Bureau has legal authority to make a decision on the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The facts indicate the claimant's supervisor or other management personnel usually told the claimant when he was to be at work early or late. It was unusual for Cisco, a co-worker, to let the claimant know he was to report to work early. The claimant used poor judgment when he did not check with his supervisor to find out if Cisco's information was accurate and the claimant was to report to work early at 8 p.m. The claimant did not commit work-connected misconduct because he did not believe Cisco when he told the claimant to report to work early. As of March 9, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's April 17, 2014 determination (reference 03) is reversed. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Bureau has legal authority to address the merits of the claimant's appeal. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 9, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css