

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN R CASSENS

Claimant

APPEAL NO. 13A-UI-13014-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES USA

Employer

OC: 10/06/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 7, 2013, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 16, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Marty Young participated in the hearing on behalf of the employer with witnesses, Jim Treinen and Jim Buser. Exhibits A-1 and One through Eight were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a security guard assigned to work at Stream Inc. from July 17, 2012, to October 10, 2013. He had received a final warning after failing to properly conduct rounds on October 3. He was informed and understood that under the employer's work rules, falsifying records was grounds for discipline.

On October 5, 2013, the claimant was responsible for doing 2:00 p.m. rounds. The claimant did not complete the rounds but instead filled out written documentation representing that he had made every stop on the checklist of stops, including recording room temperatures for computer rooms. These entries were misrepresented because he never did the tasks on the list.

After the claimant explained that he had done the rounds using a written checklist instead of using the computer system because of a malfunction, the branch manager checked the records for the doors the claimant would have had to entered or exited to do the rounds. The records disclosed that from 1:20 p.m. to 3:19 p.m., the claimant had not used his identification card to enter or exit any doors.

He was suspended on October 9 and discharged on October 10, 2013, for falsifying security round information. Before he was discharged, he was asked to explain how he was able to do rounds without entering or exiting the doors necessary to get the areas to be monitored. He had no explanation.

An unemployment insurance decision was mailed to the claimant's last-known address of record on November 7, 2013. The decision concluded he was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by November 17, 2013.

The claimant never received the decision. He filed a written appeal on November 25, 2013, after inquiring with his local Workforce Development Center and discovering he had been denied benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

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 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 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). He did not have a reasonable opportunity to file a timely appeal through no fault on his part and filed his appeal as soon as he found out he was denied benefits. The appeal is deemed timely.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant had no reasonable explanation for the missing door swipes. His credibility is also undercut because he claimed that he never worked on October 3, but it is clear that he did.

The claimant's conduct in misrepresenting security-round information was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 7, 2013, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css