

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN C LEACH
Claimant

CORKERY PAINT REPAIR LLC
Employer

APPEAL 21A-UI-4020-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2R)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Justin Leach (claimant) appealed a representative's July 14, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Corkery Paint & Repair (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2021. The claimant was represented by Luke Jenson, Attorney at Law, and participated personally. The employer participated by Keith Corkery, Owner.

Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-04020.S1 and 20A-UI-04021.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 14, 2020, as a part-time painter. He called the owner and the owner told the claimant what hours to work. The claimant last worked on March 18, 2020. On March 18, 2020, the claimant called the owner at the time the owner told him to call and no work was available. The owner said he would communicate with the claimant if there was work.

The claimant did not hear from the owner. He stopped by the property five times between March 18, 2020, and June 16, 2020, and called repeatedly. Each time the owner told the claimant there was not enough work for the claimant. The claimant assumed he had been laid off for lack of work.

The claimant left for basic training on June 16, 2020. The agency held a fact-finding interview in July 2020. The claimant was not available for comment. The owner told the agency he asked the claimant to work but he was busy. The employer had a lot of work but the claimant stopped calling in. At the appeal hearing, the owner testified there would have been work for the claimant if he would have called in at a different time of the day.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. His weekly benefit amount was determined to be \$170.00. The claimant received benefits of \$170.00 per week from March 22, 2020, to the week ending July 4, 2020. This is a total of \$2,550.00 in state unemployment insurance benefits after the separation from employment. He also received \$8,400.00 in Federal Pandemic Unemployment Compensation for the fourteen-weeks ending July 4, 2020.

A disqualification decision was mailed to the parties' last known address of record on July 14, 2020. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 24, 2020. The appeal was filed on January 27, 2021, which is after the date noticed on the decision. The claimant appealed the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for

appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer testified there was plenty of work for the claimant. Therefore, the claimant was not laid off for lack of work.

The employer separated the claimant from work. It did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

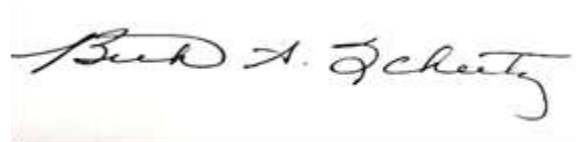
The claimant's and the employer's testimony is not the same. The administrative law judge finds the claimant's testimony to be more credible. The claimant provided documentation to support its case. The employer admitted that it could not remember dates or instances. Also, the employer's account was not the same from the fact-finding interview to the appeal hearing.

The issue of whether claimant was able and available for work as of June 14, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The July 14, 2020, reference 01, decision is reversed. The appeal in this case was timely. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

The issue of whether claimant was able and available for work as of June 14, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge

April 05, 2021
Decision Dated and Mailed

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Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>