

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YEMAYA BANKS
Claimant

APPEAL NO. 07A-UI-08876-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIRMINGHAM HEALTH CARE
Employer

**OC: 08/05/07 R: 12
Claimant: Respondent (5)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 14, 2007, reference 02, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on October 2, 2007. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Donyatta Foster participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 18, 2007, to July 19, 2007. The claimant was hired as a physician and was informed and understood that she was required to obtain an Alabama physician's license in order to continue in employment.

The claimant had filed the application to obtain an Alabama physician's license in May 2007 and did not believe there was going to be a problem with getting her license. The employer knew when it hired the claimant that she did not have a license.

The Alabama Medical Board decided that it could not approve the claimant's application without additional information from the state of Iowa where the claimant was licensed as a physician and the claimant's former employer, the University of Iowa. On June 26, 2007, the employer's chief executive officer, Jonathan Duning, informed the claimant that if she did not have a physician's license by July 20, 2007, she would be discharged. He knew that the Alabama Medical Board was meeting on July 18 and 19.

The Alabama Medical Board had not received the information it had requested from the state of Iowa as of the time of its meetings on July 18 and 19. As a result, the employer discharged the claimant on July 20, 2007, because the claimant did not have her physician license and could not treat patients. The claimant did everything required of her to facilitate the board making a decision on her licensure.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 5, 2007. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

A Notice of Claim was mailed to the employer on August 8, 2007, but was not received by the employer until September 10, 2007. The Notice of Claim stated that any protest of the claim had to be faxed or postmarked by the due date of August 20, 2007. The employer's protest was faxed on September 12, 2007, which was after the time period for protesting had expired.

The Notice of Claim did not reach the employer on a timely basis because it was not mailed to the employer's official mailing address, P. O. Box 11523, Birmingham, AL 35202, but was instead mailed to its physical address of 1600 – 20th Street South, Birmingham, AL 35205. The employer has had problems in the past with mail being misrouted if mailed to the physical address.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code section 96.6-2 provides in pertinent part:

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 failure to file a timely protest 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 the protest. The protest is deemed timely.

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

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges will be determined by the state of Alabama.

DECISION:

The unemployment insurance decision dated September 14, 2007, reference 02, is modified with no change in the outcome. The employer protest is deemed timely. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css