

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL R HASSEN**  
Claimant

**SLB OF IOWA LC**  
Employer

**APPEAL NO. 11A-UI-01827-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/28/10  
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.35(2) – Appeal Delay

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 29, 2010, reference 01, that held she voluntarily quit without good cause on November 22, 2010, and that denied benefits. A telephone hearing was held on March 16, 2011. The claimant participated. William Forbes, director of shared services; Jeff Lentz, general manager; James Walsh, assistant manager; and Lynn Misfeldt, shift manager, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the appeal is timely.

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time associate on May 19, 2008, and last worked for the employer on November 22, 2010. The claimant became ill at work on November 22 and asked to leave. At the employer's request, she found her boyfriend-employee could come in and work the remainder of her shift. Without telling the employer, she clocked out at 10:48 a.m. and left. The claimant's boyfriend did not replace her nor did she have anyone else to do so. She did not call in to the employer to let them know.

The claimant had requested to be off work for two days after November 22, but management denied the request. The claimant did not report for work or find a replacement for two days. When the claimant reported for work on Friday, November 26, she was terminated in violation of a company policy.

The claimant did not receive the department decision dated December 29. She contacted her local office and a representative told her it might take up to six weeks before she would know about her benefits. On February 8, the claimant went to her local workforce center, where she learned about the disqualification decision. The claimant signed and submitted an appeal form that day, and it was mailed by a department representative to Unemployment Appeals on February 9. The department record shows claimant has been submitting unemployment claims for each week through the date of this hearing.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal. The appeal delivery is most probably due to the failure of the U.S. Postal Service to deliver the decision envelope or department error by failing to mail it.

The claimant diligently filed her weekly claim, which supports her contention she thought she might have to wait up to six weeks for the decision based on erroneous department advice. While it is not known why the decision was not delivered to claimant, there is no proof that the department attempted to mail it to her or that the postal service did not err and failed to deliver it.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on November 26, 2010.

The claimant committed an act of misconduct on November 22, 2010, when she disregarded an employer instruction to have a replacement employee and, upon failing to do so, failed to notify the employer. This is an unexcused absence from work.

She compounded the misconduct incident by failing to report for two subsequent days in violation of the employer policy, which constitutes job-disqualifying misconduct. The employer offered two credible witnesses that the claimant was denied to be off work, and her conduct about how she handled her work shift on Monday diminishes her credibility.

**DECISION:**

The department decision dated December 29, 2010, reference 01, is modified. The claimant was discharged for misconduct on November 26, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw