

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS C RAY
Claimant

APPEAL NO. 09A-UI-03414-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE & CO - DELAWARE
Employer

OC: 06/08/08
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Travis C. Ray filed a timely appeal from an unemployment insurance decision dated February 10, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 25, 2009 with Mr. Ray participating. Industrial Relations Administrator Dale Schroeder participated for the employer, Deere & Company. Exhibit D-1 was admitted into evidence.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Travis C. Ray was employed by Deere & Company from October 18, 2004 until he was discharged January 15, 2009. Mr. Ray was absent without contact on January 9, 12 and 13, 2009. He returned on January 14, 2009 with a document purporting to be a medical excuse covering those three days. The excuse, however, had been falsified. He was discharged for falsifying a medical record.

A fact-finding decision dated February 10, 2009 disqualified Mr. Ray for benefits. Prior to February 20, 2009 he went to his local Workforce center to file an appeal. An Agency employee told Mr. Ray that he would see that the appeal was sent to the Appeals Section. The Appeals Section, however, did not receive and docket that appeal. Mr. Ray returned to the office on March 3, 2009 to inquire on the status of his appeal. Warning that no appeal had been docketed, he completed a second appeal form on that day. That document was faxed by the local office to the Appeals Section on March 3, 2009.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the claimant has filed a timely appeal. The administrative law judge concludes that he has.

The evidence in the record persuades the administrative law judge that Mr. Ray filed his appeal prior to February 20, 2009 but that the document was either not forwarded to the Appeals Section or misplaced by the Appeals Section. In either event, the delay was the fault of the Agency, not the claimant. According to 871 IAC 24.35, additional time may be granted for the appeal under these circumstances. The administrative law judge concludes that the claimant acted within a reasonable amount of time by returning to his local Workforce center on March 3, 2009 and promptly filing a second appeal after learning that the first attempt had not been docketed.

The remaining question is whether the claimant was discharged for misconduct in connection with his employment.

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 claimant freely acknowledged that he had been absent without contact for three working days and that he had attempted to justify the absences with a falsified medical record. This is sufficient to establish job-related misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated February 10, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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