

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLAN RAFAEL
Claimant

APPEAL NO: 12A-UI-02744-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/08/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 14, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. A message was left on the employer's phone to contact the Appeals Section immediately for the hearing, but the employer did not. Lysander Canlas interpreted the hearing. Based on the evidence, the claimant's arguments and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2007. He worked full time. Prior to early January 2012, the claimant had no knowledge his job was in jeopardy.

On or about January 9, 2012, an employee reported that the claimant had a gun in his vehicle. The claimant had a gun in his vehicle that he parked on the employer's premises when he worked. He had a gun permit.

The claimant did not know or understand that it was against the employer's policy to have a gun on the employer's premises, even if it was in his vehicle. The employer discharged the claimant on January 11, 2012, for violating the employer's policy.

The claimant established a claim for benefits during the week of January 8, 2012. On February 14, 2012, a representative's determination was mailed to the claimant and employer.

The determination held the claimant was not qualified to receive unemployment insurance benefits as of January 8, 2012.

The claimant does not know when he received the representative's determination, but had it when he talked to a representative on February 21, 2012. English is not the claimant's primary language and he did not understand that he needed to file an appeal or how to file an appeal. After talking to a representative at a local Workforce office, the claimant understood on February 21, he only had to reopen his claim. When he did not receive any benefits after February 21, 2012, the claimant went back to his local Workforce office again on March 13, 2012. On this date a representative told the claimant he needed to file a written appeal and helped him to do this.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 February 24, 2012 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). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The evidence indicates the claimant's failure to file a timely appeal was due to a representative's error or misinformation in combination with the claimant not understanding the determination because English is not his primary language, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of his appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2(a). 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer had justifiable business reasons for discharging the claimant. Based on the evidence presented during the hearing, the claimant did not understand that even though he had gun permit, the employer's policy did not allow him to keep a gun in his vehicle when he parked his vehicle on the employer's property while working. The evidence does not indicate that the claimant intentionally violated the employer's policy. The claimant did not commit work-connected misconduct. As of January 8, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 14, 2012 determination (reference 01) is reversed. The claimant did not file a timely appeal, but established legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The employer established justifiable business reasons for discharging the claimant, but these reasons do not constitute work-connected misconduct. As of January 8, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css