

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASRAR A IBRAHIM
Claimant

APPEAL NO. 07A-UI-06773-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/20/07 R: 02
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Asrar A. Ibrahim (claimant) appealed a representative's June 8, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Kelly Services, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2007. The claimant participated in the hearing. Craig Kissler, the staffing supervisor, appeared on the employer's behalf. Francis Chan translated the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant registered to work for the employer on November 15, 2006. The employer is a temporary employment firm. The employer assigned the claimant to a job on April 17, 2007.

On May 9, 2007, the claimant told the on-site supervisor she would not be at work the next day because she had a doctor's appointment. At her May 10 doctor's appointment, the claimant's doctor restricted her from working for three days. The claimant informed her on-site supervisor about her doctor's restrictions. The claimant understood she needed to provide the employer with a copy of her doctor's statement.

When the claimant had not returned to her assignment by May 17, the employer called and left her a message. On May 18, 2007, the claimant returned the employer's call. The employer informed the claimant she needed to bring her badge and everything to the employer's office because she no longer had a job. The employer concluded the claimant was absent without properly notifying the employer and ended the assignment. The claimant had been absent from work longer than the three days her doctor had restricted her from working. The claimant indicated she had been ill, but she had not informed the employer she was ill.

The claimant established a claim for unemployment insurance benefits during the week of May 20, 2007. On June 8, 2007, a representative's decision was mailed to the claimant and employer holding the claimant was not qualified to receive unemployment insurance benefits.

The claimant did not receive the representative's decision until mid-July 2007. The Department did not use the claimant's correct mailing address. As soon as the claimant knew about the adverse decision, she filed an appeal at her local Workforce office on July 9, 2007

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 June 18 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 did not have a reasonable opportunity to file a timely appeal because the Department did not mail the representative's decision to the claimant's correct address of record.

The claimant's failure to file a timely appeal was due to an Agency error which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Even though the claimant did not file a timely appeal, she established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or the employer discharges her for work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The employer initiated the employment separation by telling the claimant to turn in her badge on May 18, 2007.

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 evidence indicates the employer knew the claimant had a doctor's statement that restricted her from working for three days. This means the claimant was released to return to work on May 15 or 16. The claimant did not report to work or notify the employer she was ill on May 17 or 18. The employer ended the claimant's job assignment for being absent without properly notifying the employer. Since the evidence does establish any attendance problems prior to May 9, the claimant's failure to properly notify the employer she was ill and unable to work amounts to an error in judgment. The facts do not establish that the claimant intentionally disregarded the employer's interests. The claimant did not commit work-connected misconduct.

Based on this employment separation, the claimant is not disqualified from receiving unemployment insurance benefits. However, based on a decision for appeal 07A-UI-06774-DWT, the claimant is not qualified to receive benefits as of May 20, 2007.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's June 8, 2007 decision (reference 01) is reversed. The claimant did not file a timely appeal, but she established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of her appeal. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. Based on this employment separation, the claimant is qualified to receive unemployment insurance benefits. However, based on the decision for appeal 07A-UI-06774-DWT, the claimant is not qualified to receive benefits until she has been paid ten times her weekly benefit amount for insured work,

provided she is otherwise eligible. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css