IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS SECTION
1000 EAST GRAND—DES MOINES, IOWA 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GREG L DAVIS
810 4TH ST
BATTLE CREEK IA 51006

VT INDUSTRIES INC
1000 INDUSTRIAL PARK
HOLSTEIN IA 51025

Appeal Number: 04A-UI-03969-SWT
OC 08/03/03 R 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 22, 2004, reference 01, 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 and scheduled for May 3, 2004. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Kathy Sindt participated on behalf of the employer with witnesses, Amy Bremer and Al Peine. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time as a machine operator from August 27, 2001 to July 30, 2003. The claimant had agreed to work on his days off on July 29 and 30, 2003, in a pressing area.

On July 30, 2003, the employee who was to work on the heian machine, which was the claimant's normal machine, called and said he would not be at work. The claimant was asked to move over to the heian machine and run it for the rest of the day. Later, a worker relieved the claimant from his job in the pressing area. The claimant thought he had satisfied his obligation since he had agreed to work in the pressing area and started to leave work. Amy Bremer stopped him and informed him that she needed him to run the heian machine. The claimant was told that he would receive attendance points if he left work. The claimant left work because he did not want to operate the heian machine for the rest of the shift. The claimant was discharged after he reported to work on August 2, 2003, for refusing to perform his job duties. The claimant had never received any discipline for similar conduct and there was no other reason for his discharge.

A notice of claim was mailed to the employer's address of record on August 11, 2003, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of August 21, 2004. The employer's protest was faxed on August 13, 2003, which was before the time period for protesting had expired. For some reason, the Agency did not receive the protest until the employer resubmitted it on March 17, 2004, after the employer discovered the claimant was receiving benefits.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer filed a protest within the time period prescribed by Iowa Code Section 96.6-2 but due to some Agency error, it was not received on time. Under 871 IAC 24.35(2), the employer's 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.

March 22, 2004, reference 01 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).

The claimant left work based on the supervisor's representation that he would get attendance points. He was not told his job was in jeopardy if he left. No willful and substantial misconduct has been proven. At most, the evidence establishes the claimant made a good faith error in judgment when all the circumstances are considered.

DECISION:

The unemployment insurance decision dated March 22, 2004, reference 01. is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf