

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM E BALDWIN**  
Claimant

**APPEAL NO: 10A-UI-03093-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ECONO LODGE**  
Employer

**OC: 11/29/09**  
**Claimant: Appellant (2)**

Section 96. 5-2-a – Discharge  
Section 96-6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a representative's January 5, 2010 decision (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. A telephone hearing was held on March 31, 2010. The claimant participated in the hearing. Bill Amin, the general manager and owner, appeared on the employer's behalf. 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 employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 30, 2009. The employer hired the claimant to work as a part-time dishwasher/cook. The last day the claimant worked was November 11, 2009.

The claimant was sick on November 12. He did not call or report to work on November 12. On November 13, the claimant called his supervisor, the kitchen manager, and reported he was ill and unable to work. The claimant understood he could text the kitchen manager to let him know if he was able to work or when he was able to work again. On November 14 and 15, the claimant sent the kitchen manager texts indicating he was still ill and unable to work. The claimant received the kitchen manager's texts acknowledging he received the claimant's messages each day. The claimant had the flu and did not even go to his college classes.

On November 16, the kitchen manager sent the claimant a text informing the claimant that since he did not have a doctor's statement verifying he had been ill, the employer had to let him go for

missing too much work. When the claimant became ill, he tried to see a doctor but could not get an appointment until after November 16.

The claimant established a claim for benefits during the week of November 29, 2009. On January 5, 2010, a representative's decision was mailed to the claimant and employer. The decision disqualified the claimant from receiving unemployment insurance benefits as of November 29, 2009.

The claimant received the representative's decision on January 9, 2010. The claimant faxed his appeal on January 15, 2010. The claimant went to his local Workforce office on February 25, 2010 and learned the Appeals Section had not recorded receiving his January 15, 2010 appeal. The claimant filed his second appeal at the local Workforce office on February 25, 2010.

#### **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). The claimant established he filed his first appeal on January 15, 2010. The claimant had until January 15, 2010, to file a timely appeal and he did. The Appeals Section has legal jurisdiction to address the merits of the claimant's 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant. The facts, however, establish that with the exception of one day, the claimant contacted his supervisor and properly informed him he was unable to work on November 13, 14 and 15. The evidence indicates the claimant's supervisor received the text messages the claimant sent him on November 14 and 15. Even though the claimant attempted to see a doctor, he could not get an appointment before November 16. The claimant did not intentionally fail to work as scheduled. Instead he was ill and unable to work and did not attend his college classes. The claimant did not commit work-connected misconduct. Therefore, as of November 29, 2009, the claimant is qualified to receive benefits.

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. If the employer becomes a base period employer, the state of Minnesota will determine whether the employer's account is subject to or exempt from charge.

**DECISION:**

The claimant filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The representative's January 5, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 29, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css