

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARRYL Q ZEIGLER
Claimant

LENNOX INDUSTRIES INC
Employer

APPEAL 15A-UI-11603-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/21/14
Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct/Requalification
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant did not intend to appeal the subject of this appeal, the September 21, 2014, claim year unemployment insurance decision dated October 7, 2014, (reference 01) that denied benefits based upon a discharge from employment on September 3, 2014. He intended to file only an appeal from the October 4, 2015, claim year unemployment insurance decision dated October 15, 2015, (reference 01) that found the previous disqualifying separation of September 3, 2014, as having been previously adjudicated. The parties were properly notified about the hearing scheduled to be held on November 2, 2015. Claimant responded to the hearing notice instruction but no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

ISSUES:

Is the appeal timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant did not intend to appeal this decision as it was related to a prior separation, he was called back to work and has requalified for benefits having worked in and been paid insured wages of at least ten times his weekly benefit amount since then and before he filed the claim effective October 4, 2015.

REASONING AND CONCLUSIONS OF LAW:

The timeliness of the appeal is moot since claimant did not intend to appeal the September 21, 2014, claim year unemployment insurance decision dated October 7, 2014, (reference 01) that denied benefits based upon a discharge from employment on September 3, 2014. However, he has since requalified for benefits.

Iowa Code § 96.6(2) provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's separation was disqualifying. However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed effective October 4, 2015, provided he is otherwise eligible.

DECISION:

The October 7, 2014, (reference 01) unemployment insurance decision in the September 21, 2014, claim year is modified in favor of the appellant. The claimant was discharged from employment for reasons related to job misconduct, but has requalified for benefits since the separation. Benefits are allowed effective October 4, 2015, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css