

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY A FREDERICKSON
Claimant

JENSEN BUILDERS LTD
Employer

APPEAL NO: 11A-UI-00382-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/26/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Excessive Unexcused Absenteeism
Section 96.6-2 –Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 22, 2010, reference 01, that held he was discharged for excessive unexcused absenteeism on November 16, 2010, and benefits are denied. A telephone hearing was held on February 15, 2011. The claimant, and his witnesses, Mike Lowry, foreman, and Sue Konealinka, a friend, participated. Tom Nelson, HR Director, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the appeal is timely.

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time construction worker on August 14, 2008, and last worked for the employer on November 12, 2010. The employer issued written and verbal warnings to the claimant for attendance policy violations in March, September and October 2010. The claimant was put on notice that a further attendance issue could result in discharge.

The claimant's truck broke-down in Wisconsin during the weekend of November 13/14. The claimant notified his employer that due to the truck repair, he would not be able to return to work for his shift starting at 7:00 a.m. on November 15. The claimant did not return to Fort Dodge until Monday evening. When claimant reported to work on November 16, he was discharged by the general superintendent for excessive unexcused absenteeism.

The claimant moved from his address of record before the department issued the decision on December 22. Due to personal problems, the claimant did not notify the department he had moved. The claimant did not receive the department decision, and he did not learn about it until

he went to his local workforce center on January 6. He prepared and signed an appeal form that he mailed (postmarked) on January 7.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal. The claimant offered a good cause for the appeal delay.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct that is excessive unexcused absenteeism on November 16, 2010.

The claimant knew the employer attendance policy due to prior warnings, and his missing work due to a transportation issue is not excusable. His repeated absence violation constitutes job disqualifying misconduct.

DECISION:

The department decision dated December 22, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on November 16, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs