IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LATOYA P SMITH
Claimant

REACH FOR YOUR POTENTIAL INC
Employer

APPEAL NO. 08A-UI-00218-MT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/25/07 R: 03
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 27, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 24, 2008. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Exhibits A and B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was suspended for misconduct. The second issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 26, 2007.

Claimant was suspended on November 26, 2007 by employer because claimant allegedly abused a client by leaving a bruise on the client's arm. The incident was reported to the Department of Human Services. The abuse was deemed unfounded by report dated January 17, 2008. Claimant did not abuse the resident. Claimant immediately sought reassignment to no avail. Claimant had no abuse warnings on her record.

Claimant was issued an adverse decision December 27, 2007. The decision arrived in the mail January 4, 2008, probably delayed due to the New Year's holiday. Claimant appealed on January 8, 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was suspended for an act of misconduct when claimant allegedly violated employer's policy concerning abuse. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute a suspension for misconduct because claimant did not abuse the client. The unfounded abuse report clears claimant of wrongdoing. The suspension was not for a disqualifiable reason. The administrative law judge holds that claimant was not suspended for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The appeal was timely as it was made within 10 days of actual receipt of the adverse decision. The delay in receipt of the document caused by the holiday is good cause for a one day delay in filing.

DECISION:

The decision of the representative dated December 27, 2007, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. Claimant's appeal is timely.

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Marlon Mormann
Administrative Law Judge

_____
Decision Dated and Mailed

mdm/pjs