

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE G SMITH

Claimant

APPEAL NO. 10A-UI-08478-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIBERTY FOOD SERVICE UNIT 1 LLC

LIBERTY FOOD SERVICE

Employer

OC: 04/25/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Kyle Smith filed an appeal from a representative's decision dated May 20, 2010, reference 01, which denied benefits based upon his separation from Liberty Food Service. After due notice was issued, a hearing was held by telephone on July 30, 2010. The claimant participated personally. Participating on behalf of the claimant was Brian Ulin, Union Representative. The employer participated by Jeff Tlmold, General Manager, Ottumwa Iowa Facility. Employer's Exhibits One through Thirteen were received into evidence.

ISSUE:

At issue in this matter is whether the claimant's appeal was timely and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: That a disqualification decision was mailed to the claimant's last-known address of record on May 20, 2010, however the claimant did not receive the decision. Subsequently he was notified verbally about the decision by a Workforce Development representative. Mr. Smith filed an appeal at that time. The appeal was not filed until June 15, 2010, which is after the date noticed on the disqualification decision.

Mr. Smith was employed by Liberty Food Service from March 31, 2008 until April 23, 2010 when he was discharged from employment. The claimant worked as a full-time vending machine attendant. His responsibilities were to ensure that vending machines at the location where Mr. Smith worked were cleaned and filled each day.

Mr. Smith was discharged on April 23, 2010 after he failed to respond to a warning that had been given to him by the facility's general manager three days before specifically warning the claimant that he would be discharged if he did not follow instructions in the future and ensure

that the vending machines were correctly serviced during his work shift. When Mr. Tlmold observed that vending machines located near the hog barns on the facility had not been serviced by Mr. Smith on April 23, 2010, the claimant was discharged from employment.

Prior to the final incident Mr. Smith had received numerous warnings and counselings from his immediate supervisor about the necessity to perform his service duties on the vending machines on the property. The claimant had been repeatedly warned to clean and to fill all of the machines each day. Mr. Smith had demonstrated the ability to do the job requirements and had received training from the company. Based upon the repetitiveness of his failure to follow reasonable work instructions, a decision was made to terminate Mr. Smith from his employment.

It is the claimant's position that as there was some fecal material on or near some of the machines in the hog barn area he believed that other cleaning service would removal the fecal material and that the claimant should not handle it because it was food service responsibilities. Rubber gloves and sanitary cleaning equipment are provided by the company and were available to Mr. Smith.

REASONING AND CONCLUSIONS OF LAW:

Based upon the evidence in the record the administrative law judge finds that the claimant's late appeal was caused by his failure to receive the decision at his home address. Mr. Smith acted promptly to file an appeal when informed of the decision that disqualified him from benefits.

The evidence establishes that Mr. Smith was discharged based upon his repetitive failure to follow reasonable and work-related directives given to him by the facility's general manager Jeff Tlmold. Although the claimant's duties were simple, requiring him to maintain the cleanliness of vending machines and to regularly stock the machines with vending items, Mr. Smith repeatedly failed to perform these duties and received numerous warnings from his employer before being discharged.

The evidence in the record establishes that Mr. Smith at times performed his duties as expected by the employer and conforming to the training that he had received from the company. On numerous other occasions, the claimant failed to clean or stock vending machines and did not provide reasonable explanations to his employer for failing to do so.

The employer acted reasonably in issuing Mr. Smith a final warning on April 20, 2010, warning him at that time that failure to stock the vending machines could result in his termination. When the general manager found three days later that the vending machines remained unstocked, the claimant was discharged. Based upon the totality of the evidence in the record the administrative law judge concludes that the claimant's omissions were in disregard of the employer's interests and standards of behavior. The claimant had the ability to do the job but did not do so on a consistent basis after warning. Benefits are withheld.

DECISION:

The representative's decision dated May 20, 2010, reference 01, is hereby affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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