

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICK R YETMAR**  
Claimant

**BHJ USA LLC**  
Employer

**APPEAL 21A-UI-24694-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/12/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant, Rick R. Yetmar, filed an appeal from the October 14, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on January 4, 2022. The claimant participated personally. The employer/respondent, BHJ USA LLC., participated through Amber Brouhard. Clark Nelsen also testified for the employer. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted.

**ISSUES:**

Is the appeal timely? Was the claimant discharged for disqualifying job-related misconduct? Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence, the administrative law judge finds: Employer is a pet food production facility. Claimant worked full-time as a production supervisor from December 2020 through September 1, 2021. The evidence is disputed as to whether claimant quit or was discharged.

Employer has a written attendance policy, which issues attendance policy points for attendance infractions. Upon receipt of 30 attendance points in a year, an employee is subject to discharge. Employer also has a policy which states that walking off a shift without permission is considered job abandonment. Claimant was trained on these policies upon hire. He was also expected to enforce employer policies amongst his employees. Employer does not usually apply the attendance policies to its salaried employees (management). Due to continued issues though with claimant, it was applied to him to track his attendance infractions. Claimant received warnings on May 22, 2021 after sending his team home early without authorization, on June 14, 2021, for incurring 9/30 attendance points and August 3, 2021 for having 19/30 attendance points.

Claimant initially requested September 1, 2021 off to be with his ex-spouse, who was having a medical procedure. The request was denied because claimant lacked sufficient vacation time to cover it. Claimant asserted he worked three days at twelve hours and a six hour shift so that mathematically, he would not need the full-time off. On August 31, 2021, claimant realized he wanted to be off that day and not September 1, 2021. He did not notify his manager, Clark Nelsen that he would be leaving early. Employer learned claimant had left when Mr. Nelsen went to the work floor and could not find him. He tried to text and call claimant. Claimant finally responded he was at the hospital. Claimant did not report to work for his shift the next day and was contacted by Mr. Nelsen. He was subsequently discharged.

An initial decision dated October 14, 2021 (reference 01) was mailed to the claimant's address of record. The decision contained a warning that an appeal was due by October 24, 2021. Claimant did not receive the initial decision but knew mail would be time sensitive. Claimant contacted IWD approximately 10-14 days after his fact-finding interview to inquire on the decision and was informed over the phone of the unfavorable decision. Claimant immediately filed his appeal online with an effective date of November 2, 2021.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether claimant filed a timely appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 division 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 division error or misinformation or delay or other action of the United

States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal immediately upon learning of the initial decision, after he contacted IWD. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct.

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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 employer has the burden of proof in establishing disqualifying job related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The employer has the right to expect an employee to work as scheduled, or alternately, make arrangements with management prior to missing a shift. It cannot be ignored that claimant as a production supervisor, was in a position of leadership and management. Claimant in this case was a plant manager and had a history of attendance infractions, including two written warnings. Claimant knew he had no vacation time to cover an absence to with an ex-spouse. Claimant chose to take the time off, without permission and without adequate vacation time to cover the absence, when he walked off his shift on August 31, 2021. Claimant has failed to present sufficient evidence to mitigate his non-compliance with the employer's reasonable expectations. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct. Benefits are denied.

**DECISION:**

The October 14, 2021 (reference 01) initial decision is affirmed. The claimant filed a timely appeal. The claimant was discharged for disqualifying job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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January 28, 2022  
Decision Dated and Mailed

jlb/mh