

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VERONICA BAKER
Claimant

APPEAL NO. 10A-UI-03043-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTRONIC DATA SYSTEMS CORP
Employer

OC: 01/03/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 1, 2010, reference 01, that concluded she voluntarily quit employment without good cause. A telephone hearing was held on April 8, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant file a timely appeal?
Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a customer service representative from March 30, 2009, to August 6, 2009. Starting in July 2009, the claimant missed several days of work due to illness, including times when she became sick at work and had to leave work early. She received warnings regarding her attendance, and the last time she was warned, she was told that if she missed another day of work, she would be discharged.

On about August 6, 2009, the claimant was required to leave work early because she became seriously ill. She went to the urgent care clinic and then was transported to the hospital due to this illness. At the beginning of the next week, the claimant's supervisor called the claimant and asked her to return all company property. The claimant understood—based on the warning that she had received and the request for the company property—that she was discharged from employment. The claimant's illness was later diagnosed as a reaction to mold in her residence. The claimant moved out of the house, and recovered from her medical problems.

An unemployment insurance decision was mailed to the claimant's last-known address of record on February 1, 2010. The decision concluded she had voluntarily quit employment and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 11, 2010.

The claimant did not receive the decision within the 10-day period for appealing the decision. She was called out-of-town due to a family medical emergency when the decision was sent. She received the decision when she returned to her residence on February 20. She filed a written appeal immediately on February 22, 2010.

REASONING AND CONCLUSIONS OF LAW:

Under the unemployment insurance law, an unemployment insurance decision becomes final unless appealed within 10 days after the decision was mailed to the party's last-known mailing address. Iowa Code section 96.6-2. The case law, however, states that an appeal is deemed timely if the party did not have a reasonable opportunity to file a timely appeal, and then appealed immediately after receiving notice of the decision. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). Based on this, the claimant's appeal is deemed timely.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The evidence establishes that the claimant was discharged for absenteeism due to illness, which is not misconduct.

DECISION:

The unemployment insurance decision dated February 1, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs