

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALAIKA K HOUSTON
Claimant

APPEAL NO: 11A-UI-01360-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC – LP2
Employer

OC: 08/08/10
Claimant: Respondent (5)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 1, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer did not file a timely protest. The claimant participated in the hearing. Andrea Lawrence, the human resource manager, and Jim Johnson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUES:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2005 as a full-time assembler. The employer's policy requires employees requesting a vacation day to do so 24 hours in advance.

On September 1, 2010, the employer placed the claimant on probation for continuing attendance issues. The claimant understood she could not have any unexcused absences or tardies for six months and if she did the employer would discharge her. The claimant made a timely request to take a vacation day on December 3. The claimant and others took a 15-passenger van to St. Louis for the weekend. The plan was to leave St. Louis on Sunday morning and drive back to Davenport. One member of the group did not appear until Sunday afternoon. The group waited for this person and could not leave St. Louis until Sunday afternoon. The claimant and the driver of the van had to go to Cedar Rapids. The driver had to take the van back to Cedar Rapids and the claimant's vehicle was in Cedar Rapids. The claimant and the driver left Davenport on Monday morning, December 6. When the claimant left Davenport that morning, she had plenty of time to get to work at 3 p.m. that day.

When the claimant got to Cedar Rapids, she had problems starting her car. As a result of her car problems, the claimant knew she would not get to work by 3 p.m. She called the employer at 2:15 p.m. and asked if she could take a vacation day that day. The employer denied this request because she had not made a timely request or 24 hours in advance. The employer discharged the claimant on December 7 because she violated her September 1, 2010 probation with her unexcused December 6 absence.

The claimant reopened her claim the week of December 5, 2010. On December 8, 2010, the Department mailed a notice to the employer indicating the claimant had re-filed her claim for benefits. The notice of claim indicated the employer had until December 20, 2010, to respond to the notice or protest the claimant's receipt of benefits. The employer faxed the completed notice of claim form or its protest on December 14, 2010.

REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts establish the employer filed its protest on December 14, 2010, or before the December 20, 2010 deadline. Even though the Claims Section did not acknowledge receipt of the employer's December 14, 2010 protest, the employer filed a timely protest.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood her job was in jeopardy after the employer placed her on the September 1, 2010 probation for continued attendance issues. The claimant also knew she would be discharged if within the next six months she had one more unexcused absence or tardy. Even though the claimant initially planned to be back from St. Louis earlier on Sunday, December 5, she still had enough time to report to work by 3 p.m. on Monday, December 6, when she left Davenport that morning. The claimant did not know she would have car problems when she went to pick up her vehicle in Cedar Rapids. The claimant took reasonable steps and fully intended to be at work as scheduled on December 6, 2010. The claimant tried to prevent her employment separation by calling the employer before her shift to see if the employer would grant her a vacation day at the last minute due to unforeseen events that occurred in her life.

The employer established justifiable business reasons for discharging the claimant when she violated her probation by having unexcused absences while she was on probation. The claimant did not commit work-connected misconduct since she planned to be at work and tried to be at work by 3 p.m. She was unable to report to work as a result of events beyond her control. As of December 5, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's February 1, 2011 determination (reference 02) is modified, but the modification has no legal consequence. The employer filed a timely protest. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 5, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs