

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS R ANDRESEN
Claimant

DON HUMMER TRUCKING CORP
Employer

APPEAL 21A-UI-24613-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/03/21
Claimant: Respondent (1-R)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On November 8, 2021, employer Don Hummer Trucking Corporation filed an appeal from the October 27, 2021 (reference 01) unemployment insurance decision that allowed benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Monday, January 3, 2021. The claimant, Thomas R. Andresen, did not appear for the hearing and did not participate. The employer, Don Hummer Trucking Corporation, participated through Dena Boelter, Director of Human Resources. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the employer file a timely appeal?
Was the claimant discharged from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Don Hummer Trucking Corporation on April 28, 2011. Claimant was employed with the employer as a full-time driver who held a Class-A CDL license and operated an 18-wheeler across the United States. His employment ended on June 25, 2021, when he was discharged.

Claimant last reported to work on March 13, 2021. He stopped reporting to work after that date and took FMLA-protected leave due to a non-work-related medical condition. Claimant spent several months dealing with his medical condition and attempting to pass a DOT physical. However, he could not find a doctor who would sign off and authorize him to return to driving. Boelter remained in contact with the claimant while he was on leave, and she made him aware that he would not be able to return to work if he did not pass the DOT physical and secure his Class-A CDL.

As of June 25, 2021, claimant's FMLA-protected leave had run out. Claimant still had not passed a DOT physical and he no longer held a Class-A CDL. Therefore, the employer discharged him from employment. The employer had no work available for the claimant if he did not hold a Class-A CDL.

The unemployment insurance decision was mailed to the employer's address of record on October 27, 2021. The decision states that the appeal must be filed no later than November 6, 2021. As November 6 fell on a Saturday, the employer had until the following Monday, November 8, to file its appeal. The employer filed an appeal on November 8, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). 00194 Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the evidence in the record shows that the employer filed its appeal on the first business day following the deadline, which fell on a weekend day. Therefore, the employer's appeal is timely.

The next issue is whether claimant is eligible for unemployment insurance benefits following his separation from employment. Iowa Code § 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.

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). Further, the employer has the burden of proof in establishing disqualifying job 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

In this case, the employer discharged claimant after his FMLA-protected leave expired and he had not passed the required DOT physical. Claimant was experiencing a non-work-related medical issue, and despite numerous attempts, he simply could not obtain a physician's signature certifying that he could work. This was not an act of willful or deliberate misconduct by the claimant. The employer has not established that claimant engaged in any disqualifying misconduct, and therefore benefits must be allowed.

As benefits are allowed based on this separation, the issues of overpayment and participation are moot.

This matter will be remanded for a determination of whether the claimant is able to work and available for work under the law.

DECISION:

The October 27, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and chargeability are moot.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a determination of whether the claimant is able to work and available for work under Iowa Code section 96.4(3).



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 26, 2022
Decision Dated and Mailed

lj/lj