

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELVAN LANDERMAN**  
Claimant

**APPEAL NO. 09A-UI-10815-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTRONIC DATA SYSTEMS CORP**  
Employer

**Original Claim: 05/03/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated June 11, 2009, reference 01, which held him not eligible to receive unemployment insurance benefits based upon his separation from Electronic Data Systems Corporation. After due notice was issued, a telephone conference hearing was scheduled for and held on August 13, 2009. The claimant participated personally. Although duly notified, there was no participation by the employer.

**ISSUES:**

The issues are whether the claimant has established good cause for late-filing of his appeal and whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having reviewed all of the evidence in the record, finds: Elvan Landerman was employed by Electronic Data Systems Corporation from September 2006 until May 7, 2009, when he was discharged from employment. The claimant last held the position of leave administrator on a full-time basis and was paid by salary.

The claimant was discharged on May 7, 2009, for writing a remark to another employee, attempting to urge the employee to speed up paperwork on a claim. Although the employer became aware of the claimant's statement approximately one month before his discharge, the employer did not act to discharge Mr. Landerman at that time. No further conduct took place in the interim. The claimant believes he was discharged as retaliation for a pay increase that had been mandated by a contract with a company client.

The claimant's appeal in this matter was received beyond the ten-day statutory period, as the claimant did not receive the initial fact-finder's decision but only later learned of the decision when he personally visited a Workforce Development Center. The claimant acted immediately to file his appeal at that time. Good cause for late-filing has been shown.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for a current act of misconduct. It does not.

Iowa Code section 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.

871 IAC 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The evidence in the record establishes that the claimant has good cause for late-filing of his appeal. The evidence further establishes that the claimant was not discharged for a current act of disqualifying misconduct. The evidence in the record establishes that the employer was aware of the statement that Mr. Landerman made approximately one month before the claimant's discharge from employment.

An employer may discharge an employee an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits

related to that separation. Inasmuch as the evidence in the record establishes that the employer had not previously warned the claimant regarding his interaction with other company employees and has not appeared at the hearing, the employer has not met its burden of proof to establish the claimant acted deliberately or negligently. The employer also has not established a current or final act of misconduct at the time of separation that would disqualify Mr. Landerman from receiving unemployment insurance benefits. Benefits are allowed.

**DECISION:**

The representative's decision dated June 11, 2009, reference 01, is reversed. The claimant was dismissed for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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