

IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS SECTION
1000 EAST GRAND—DES MOINES, IOWA 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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AMENDED

Appeal Number: 05A-UI-06924-SWT
OC: 05/22/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 22, 2005, reference 01, that concluded she was discharged for work-connected misconduct. In her appeal, the claimant raised the issue of whether the employer had failed to file a timely protest regarding the claimant's separation of employment. A telephone hearing was held on July 21, 2005, on the issues regarding the claimant separation from employment. The hearing was continued until August 12, 2005, to consider the issue of whether the employer filed a timely protest. The claimant participated in the hearing. Wendy Mesenbrick participated on behalf of the employer with a witness, Nancy Flaiz. Exhibits A-1, A-2, and A-3 were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 23, 2004. The claimant returned to work for the employer on July 19, 2004, and continued to work until January 6, 2005. The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was assigned to work at Wells Fargo as a customer service agent.

During the time period that the claimant worked at Wells Fargo, she missed work several days due to her daughter's illness. She called in properly when she missed work. On January 5 and 6, 2005, the claimant was unable to report to work because of heavy snows that made her driveway and the streets in her area impassible. She called in properly to report her absence. On January 6, 2005, Wells Fargo informed the employer that it wanted the claimant removed due to her absenteeism. The employer informed the claimant that she was discharged from employment due to excessive absenteeism.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of January 2, 2005. A notice of claim was mailed to the employer's address of record on January 7, 2005, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of January 18, 2005. The employer's protest was mailed on January 18, 2005, which was within the time period for protesting. Because of some error by the U.S. Postal Service or the Agency, the protest was never received. On January 31, 2005, the employer also mailed a timely protest of a second notice of claim sent to the employer on January 26, 2005. No action was taken on the notice of claim because The Agency considered the second additional claim to have been filed in error.

The claimant filed a new claim for a second benefit year effective May 22, 2005. The employer filed a timely protest of that claim on June 6, 2005.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits.

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The employer's protest was filed timely but was not received due to an Agency error or delay or other action of the United States Postal Service, which, under 871 IAC 24.35(2), excuses the delay in filing the protest. The protest is deemed timely.

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant missed work due to legitimate reasons and properly notified the employer regarding her absences. The claimant testified credibly that a heavy snowfall from a winter storm had prevented her from working on January 5 and 6, 2005.

DECISION:

The unemployment insurance decision dated June 22, 2005, reference 01, is reversed. The employer's protest is deemed timely. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation from employment, if she is otherwise eligible.

saw/kjw/pjs