

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

SEAN S MCFARLAND
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LAURENS IA 50554

WAL-MART STORES INC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09562-SWT
OC: 08/08/04 R: 01
Claimant: Respondent (5)

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 96.6-2 – Timeliness of Protest
Iowa Code Section 96.7-2-a(2) – Charges to the Employer's Account

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 26, 2004, reference 03, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on September 30, 2004. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Marina Andrews participated on behalf of the employer. Exhibits A-1 and One were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as grocery employee from February 11, 2003 to June 2, 2003. The employer discharged the claimant on June 2, 2003, after his mother was promoted into a management position and under the employer's work rules the claimant was not allowed to remain employed in the store.

A notice of claim was mailed to the employer's address of record on August 13, 2004, 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 August 23, 2004. The employer's protest was mailed on August 23, 2004. Due to some error by the United States Postal Service or the Agency, the protest mailed by the employer was never received

REASONING AND CONCLUSIONS OF LAW:

The 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 filed a protest within the time period prescribed by Iowa Code Section 96.6-2, but due to some Agency error or delay or other action of the United States Postal Service, it was never received, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest must be considered timely.

The 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).

No misconduct has been proven in this case. The claimant never quit his employment. He was discharged because of the employer's work rules not anything that he did wrong. The employer account is chargeable for its share of benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated August 26, 2004, reference 03, is modified with no change in the outcome of this case. The employer filed a timely protest, but the employer's account is subject to charge for benefits paid to the claimant because the claimant's discharge was not for work-connected misconduct.

saw/kjf