

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLIVER A MORRIS
Claimant

APPEAL NO: 13A-UI-08517-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES REGIONAL TRANSIT
AUTHORITY**
Employer

OC: 06/16/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 12, 2013, reference 01, that held he was discharged for misconduct on June 19, 2013, and benefits are denied. A telephone hearing was held on August 20, 2013. The claimant participated. The employer submitted a written statement, Exhibit One. Claimant Exhibit A was received as evidence.

ISSUES:

Whether claimant filed a timely appeal.

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant to his address of record on July 12, 2013 with an appeal deadline date of July 22. He submitted an appeal form to a local workforce center on July 22 who forwarded it to the UI Appeals that marked it received on July 23.

Claimant was hired on February 3, 2003 and worked as a full-time route bus driver until June 19, 2013. The employer discharged him for too many preventable accidents.

Claimant believes the policy is that five preventable accidents can lead to employment termination. He acknowledges that his bus struck a parked vehicle side view mirror on or about June 11, 2013 that is preventable though it happened on a curvy road.

Claimant denies he had five preventable accidents at the time of discharge as some should have been dropped from his record due to the passage of time and others should not have been considered preventable.

The employer chose not to personally participate in this appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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.

871 IAC 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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes claimant filed a timely appeal when it submitted it to a department representative on the tenth day appeal deadline date. The one day delay to submission to UI Appeals is due to department inaction not claimant.

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.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on June 19, 2013 for too many preventable accidents.

Claimant offered credible testimony he did not have five preventable accidents and the employer did not offer live testimony to dispute it. Absent employer response, claimant did not have sufficient accidents to merit employment termination. Job disqualifying misconduct is not established.

DECISION:

The department decision dated July 12, 2013, reference 01, is reversed. Claimant filed a timely appeal. The claimant was not discharged for misconduct on June 19, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs