

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON J RUSHMAN
Claimant

APPEAL NO. 14A-UI-00743-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09/08/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 30, 2013, reference 01, that concluded he voluntarily quit employment without good cause. A telephone hearing was held on February 12, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A-1 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a night stocker from June 2012 to December 20, 2012.

The claimant was off work on an approved medical leave after December 20, 2012. He returned with no restrictions in January 2013, but the store manager would not allow him to return to work because of a concern that his medical condition would reoccur.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 8, 2013, to gain access to Promise Job services.

An unemployment insurance decision was mailed to the claimant's last-known address of record on September 30, 2013. The decision concluded he voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Bureau by October 13, 2013.

The claimant never received the decision and was unaware that he was disqualified. When he was in the Workforce Development Center, he was informed that about his disqualification and filed his appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal. The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed his appeal late because he never received the decision in the mail. He did not have a reasonable opportunity to file a timely appeal.

The failure to file a timely appeal was likely due to delay or other action of the United States Postal Service, which under rule 871 IAC 24.35(2) would excuse the delay in filing an appeal. The appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant never quit his employment and was not discharged for misconduct. Iowa Administrative Code r. 871-24.22(2)j(1) states that: "If at the end of a period or term of negotiated leave of absence the employer fails to re-employ the employee-individual, the individual is considered laid off and eligible for benefits." This rule applies to this case and the claimant would be considered to have been laid off due to lack of work.

DECISION:

The unemployment insurance decision dated September 30, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs