

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NANCY L TREISE**  
Claimant

**QHC FORT DODGE VILLA LLC**  
Employer

**APPEAL 17R-UI-09132-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 3, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 26, 2017. Claimant participated. Employer did not answer at the telephone number it provided for the hearing and therefore did not participate. Department's Exhibit D-1 was received.

**ISSUES:**

Is the appeal timely?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the claimant/appellant's address of record on July 3, 2017. The claimant received the decision within a few days of mailing. The decision warns that an appeal must be filed by July 13, 2017. Claimant put her appeal in her mailbox on July 13, 2017, before the mail was delivered. Unbeknownst to claimant, the postal worker did not pick up the letter that day. The postal worker apparently picked up the letter the next day, as the envelope is postmarked July 14, 2017.

Claimant began working for employer in 2016. She last worked as a charge nurse. Claimant was separated from employment on May 15, 2017, when she was terminated.

Sometime in May 2017, employer warned all licensed staff that all continuing education units (CEUs) must be completed by May 16, 2017. Claimant completed her CEUs on May 15, 2017.

The same day, on May 15, 2017, director of nursing Lanett Bair called claimant into her office. Bair informed claimant she was being sent home for failure to complete her CEUs in a timely manner. Claimant stated she had completed her requirement that day. Bair seemed surprised

and told claimant she must go home regardless and Bair would contact her after speaking with the administrator.

Bair never contacted claimant. Claimant attempted to contact Bair, but never heard back from her.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 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.

In this case, the appeal was late due to an omission on behalf of the postal service. It was reasonable for claimant to assume that if she put her appeal letter in her mailbox before the mail was delivered on July 13, 2017, it would be postmarked the same day. However, in this case it was not postmarked until the next day on July 14, 2017. Claimant has presented a good cause reason for filing a late appeal, and the appeal will therefore be considered timely. Iowa Admin. Code r. 871-24.35(2).

The next issue is whether claimant's separation from employment disqualifies her from receiving unemployment insurance benefits. The administrative law judge concludes she was separated for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Employer informed claimant it was letting her go due to her failure to complete her continuing education requirements by the deadline. In fact, claimant had completed the continuing education as required. Therefore, employer has failed to establish claimant was terminated for job disqualifying misconduct.

**DECISION:**

The July 3, 2017, (reference 01) unemployment insurance decision is reversed. The appeal is timely. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

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