

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRNA G CRUZ
Claimant

APPEAL NO. 12A-UI-00314-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 11/27/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Mirna G. Cruz filed an appeal from an unemployment insurance decision dated December 21, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held February 7, 2012 with Ms. Cruz participating. Ninfa Redmond served as translator. The employer, West Liberty Foods, did not respond to the notice. The claimant's appeal letter was admitted into evidence as Exhibit D-1.

ISSUES:

Has the claimant filed a timely appeal?
Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Mirna G. Cruz was employed by West Liberty Foods from June 2010 until she was discharged November 29, 2011. Ms. Cruz had been told to return from a Thanksgiving week break on Tuesday, November 29, 2011. When she did, she was discharged. The company told her that she should have returned on November 28, 2011.

The fact-finding decision from which Ms. Cruz has appealed was mailed to her at an incorrect address. She did not receive it. She first learned of its existence on January 10, 2012 at her local workforce center.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. The administrative law judge concludes that it can be accepted as timely because it was initially mailed to an incorrect address. Additional time for an appeal may be granted when the delay is the fault of the United States Postal Service or the agency. See 871 IAC 24.35.

The remaining question is whether the claimant was discharged for misconduct in connection with the employment.

Iowa Code § 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 employer has the burden of proof. See Iowa Code § 96.6-2. The employer did not participate in the appeal hearing and had not participated in fact finding. The claimant testified credibly and under oath that she returned to work on November 29, 2011 because that was the date she had been told to return. The administrative law judge concludes that the evidence does not establish a final, current act of misconduct leading to discharge. Under these circumstances, no disqualification may be imposed. See 871 IAC 24.32(8).

DECISION:

The unemployment insurance decision dated December 21, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs