

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GIOVANI M RUIZ CORNIER
Claimant

APPEAL NO. 14A-UI-06252-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 05/11/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 3, 2014, reference 01, that concluded he was discharged for work-connected misconduct . A telephone hearing was held on July 10, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Gisella Young. Pamela Winkel participated in the hearing on behalf of the employer. Exhibits One, Two and A-1 were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a packager from September 2009 to May 12, 2014. He was informed and understood that under the employer's work rules, employees were required to be at their workstation at the start of their shift and were required to notify the employer an hour before the start of the shift if they were not able to work as scheduled.

The claimant received a first final warning on January 24, 2014, for arriving at the production floor ten minutes late. He asserted it was because his car broke down. The claimant had been verbally warned about reporting late several times before. He received a second final warning on April 9, 2014, for arriving at the production floor five minutes late. He was told that he would be terminated if another attendance issue occurred. The claimant did not call to the notify the employer that he was going to be late.

On May 8, the claimant was scheduled to report to work at 5:00 p.m. He again had car problems. He called his supervisor 15 minutes before the start of his shift to state he was going to be about five minutes late. He did not report to work until 5:51 p.m.

The claimant was discharged on May 12, 2014, for repeated violations of the attendance policy.

An unemployment insurance decision was mailed to the claimant's last-known address of record on June 3, 2014. The decision concluded he had been discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by June 13, 2014.

The claimant never received the decision in the mail. He contacted his local Workforce Development Center around June 17, 2014, and discovered he was disqualified. He immediately filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

The 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 did not have a reasonable opportunity to file a timely appeal because he never received the decision. The appeal is deemed timely.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

Absenteeism arising out of matters of purely personal responsibilities such as childcare and transportation has not been held excusable by the Court. *Harlan v. Iowa Department of Job Service*. 350 N.W.2d 192 (Iowa 1984).

The claimant was repeatedly late for work and failed to properly notify the employer about his reporting to work late. The final incident involved the claimant reporting to work about an hour late without proper notice to the employer. He was on a final warning but did not take the proper steps to make sure he would be at work on time. Work-connected misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 3, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css