IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BENJAMIN R WICKMAN
Claimant

FAREWAY STORES INC
Employer

APPEAL NO. 08A-UI-11238-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-12-08 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 4, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 15, 2008. The claimant did participate. The employer did participate through Garrett Piklapp, Attorney at Law, and Wes Bass, Warehouse Manager. Department's Exhibit D-1 was received. Employer's Exhibit One was received.

ISSUE:

Did the claimant file a timely appeal?

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an order picker, full-time, beginning May 9, 2001, through October 13, 2008, when he was discharged.

A disqualification decision was mailed to the claimant's address of record on November 4, 2008. The claimant did not receive the decision. He went to his local Iowa Workforce office to inquire as to why he had not heard anything about his unemployment benefits claim and was told that a decision had been mailed to him and that any appeal was due on November14, 2008. The claimant filed his appeal on November 25, the day he visited his local Iowa Workforce office.

The employer was notified by their Hormel meat representative that an extraordinarily large number of meat coupons were being redeemed in the Boone area. The employer began an investigation. The employer interviewed the claimant on August 26 and asked him about the meat stickers on boxes of Hormel meat that he would routinely pick as part of orders for stores. The claimant admitted that he was taking the coupons or stickers off of the boxes of meat and that he was then using a web site to redeem the coupons for merchandise for himself and his girlfriend. The claimant denied that he knew of any other employees involved in taking the meat

coupons, although that was not true, he did know that other employees were taking the coupons. The claimant was suspended for one day and then told that he could return to work while the employer completed their investigation. As part of their investigation, the employer contacted the website to learn which employees had been accessing the site to redeem the meat coupons.

It took the employer weeks to obtain the information, as the website required the employer sign a non-disclosure agreement with regard to some aspects of the website. The employer received the website information in early October 2008 and learned that the claimant had created a fictitious business in order to redeem the coupons. (See Employer's Exhibit One, page five) Neither the claimant nor any of his coworkers had permission from the employer to remove the meat coupons or stickers before shipping the product to the store that had ordered it. The coupons were to be redeemed by business purchasers. The claimant had received the employer's handbook or policy book which prohibits improper handling of coupons. By taking the coupons, the claimant was stealing the opportunity of the end purchaser to use the coupons. The claimant had no permission from the employer to take anything off of the boxes of meat he was assigned to pack to ship out to stores.

The claimant lied to the employer about knowing that other employees were involved. The employer's investigation revealed that up to four or five other employees had been taking the coupons without permission and redeeming them. All four or five employees discovered to have been redeeming the coupons were discharged.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6-2 provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any

> appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

The claimant alleges that another employee who took the coupons was not discharged. The claimant was not present when the employer interviewed other employees and does not have any firsthand knowledge of what was said to the employer. The employer has discharged all employees they discovered were redeeming Hormel meat coupons on the website. The claimant's allegation that other employees who engaged in the same misconduct he did but were not fired, has not been established.

By his own admission, the claimant entered false information into the website in order to redeem the coupons. He had received the employer's handbook, which prohibits improper handling of coupons. The claimant knew or should have known that he had no permission to take the coupons, particularly when he falsely alleged he was a business redeeming the coupons. The claimant's actions amount to sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 4, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw