

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA M HEATH
Claimant

APPEAL NO. 12A-UI-04915-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**OC: 03/04/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 9, 2012, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on June 4, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Kuiper participated in the hearing on behalf of the employer with a witness, Beth Anderson. Exhibits One through Four 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 an in-home service technician from August 15, 2011, to February 20, 2012. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer within five days of any arrest for a felony or misdemeanor.

On February 18, 2012, the claimant purchased three guns from a person. On February 21, 2012, the police searched the claimant's home because the guns were stolen property. During the police search of his house, the police did not find the guns but instead found marijuana. The claimant was brought in for questioning but was not arrested at that time. The claimant cooperated with the police to retrieve the guns.

The claimant was absent from work on February 21 and the rest of the week. He called his supervisor on the morning of February 21 to let him know that he would not be at work because he was being questioned by the police and was cooperating with them. He also notified his supervisor on February 23 about the police investigation regarding the stolen guns, and the supervisor removed him from his route. The supervisor informed the area human resources manager about the claimant's situation that day by email.

The claimant talked to another supervisor, Larry Eurich, during that week as well. He requested an unpaid leave of absence from Eurich to take care of his issues with the police and protect his job. Eurich told him that his request for a leave was granted.

On February 27, 2012, the claimant was arrested and taken to jail. He was charged with trafficking in stolen weapons, possession of marijuana with intent to deliver, failing to affix a tax stamp on the marijuana, and child endangerment.

The claimant was released from jail pending trial on March 1, 2012. On March 2, 2012, the claimant contacted his supervisor and informed his supervisor about his arrest. His supervisor told him that he would need to prepare a statement about the specifics of what happened and forward any court papers he had. The claimant immediately complied with this supervisor's request and submitted a timeline explaining what had happened and the court documentation of the charges against him to the supervisor and human resources manager.

The employer discharged the claimant on March 2, 2012, for an alleged violation of the employer's policy requiring notice to the employer within five days of an arrest.

The claimant has pled not guilty to the charges against him and no trial or conviction has taken place.

An unemployment insurance decision was mailed to the claimant's last-known address of record on April 9, 2012. The decision concluded the claimant 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 Section by April 19, 2012.

The claimant never received the decision within the ten-day period for appealing the decision. He contacted his local Workforce Development Center on April 30 to find out why he was not receiving benefits and found out he was disqualified. He submitted an appeal by fax 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 failure to file a timely appeal was due to an Agency error or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The claimant did not have a reasonable chance to file a timely appeal and appealed immediately when he learned about his disqualification. The appeal is deemed timely.

The next 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The human resource manager stated initially that the reason for the claimant's discharge was his untimely notice of his arrest in violation of company policy. When pressed by the employer's representative later, she again said the policy violation was the primary reason for his arrest but also said the claimant was not forthcoming about the details of his situation. First, the evidence is clear the claimant complied with the arrest notification policy. He was not arrested until February 27 and notified the employer on March 2, which is within five days. Second, the evidence fails to show the claimant was dishonest or not forthcoming about had happened.

Based on the reasons provided for the claimant's discharge, while the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

The parties are notified about Iowa Code § 96.5-2-b and c, which provide that a claimant's wage credits can be cancelled if a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim.

DECISION:

The unemployment insurance decision dated April 9, 2012, 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