

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY C DANIELS
Claimant

APPEAL NO. 09A-UI-02737-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINDSOR WINDOW COMPANY
Employer

OC: 09/21/08
Claimant: Respondent (4)

Section 96.5(2)a - Discharge for Misconduct
Section 96.7(2)a(6) - Appeal from Statement of Charges

STATEMENT OF THE CASE:

Windsor Window Company filed an appeal from a representative's decision dated February 12, 2009, reference 01, which held that the protest to Jeffrey Daniels' claim was not filed timely. After due notice was issued, a hearing was held by telephone on March 17, 2009. Mr. Daniels participated personally. The employer participated by Liz Mallaney, Human Resources Assistant Manager.

ISSUE:

At issue in this matter is whether the employer filed a timely protest to Mr. Daniels' claim. If the protest is deemed timely, the issue then becomes whether he was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Daniels filed a claim for job insurance benefits effective September 21, 2008. Notice of the claim was mailed to the employer at its address of record on September 26, 2008. The employer did not receive the notice of claim. On February 9, 2009, the employer was mailed a statement of charges for the fourth quarter of 2008, which reflected benefits paid to Mr. Daniels. Workforce Development did not issue any determinations regarding Mr. Daniels between September 26, 2008 and February 9, 2009. The employer protested his entitlement in an email sent to Workforce Development on February 11, 2009.

Mr. Daniels began working for Windsor Window Company on August 11, 1998 and last worked on June 21, 2008. He was last employed full time as shipping group leader. He stopped working in June of 2008 because he was injured in a car accident that was not related to his employment. He was released to return to work with restrictions on September 15. The employer did not have work he could perform within this restrictions. Because he could not return to his normal job and had exhausted all available leave time, Mr. Daniels was discharged

from the employment. He was verbally notified of his discharge on or about September 18, 2008.

REASONING AND CONCLUSIONS OF LAW:

The employer had ten days in which to protest Mr. Daniels' entitlement to job insurance benefits. Iowa Code section 96.6(2). Inasmuch as the employer did not receive the notice of claim mailed on September 26, 2008, it could not have perfected its protest by the statutory deadline. An employer that has not been notified of a claim or of an allowance of benefits may file an appeal from the quarterly statement of charges. Iowa Code section 96.7(2)a(6). The statement of charges reflecting benefits paid to Mr. Daniels was mailed on February 9 and the employer filed its protest on February 11, well within the 30 days allowed by section 96.7(2)a(6). For the above reasons, the employer's protest is deemed timely filed. As such, Workforce Development has jurisdiction over the separation issue.

The parties do not dispute the fact that Mr. Daniels was discharged. An individual who was discharged from employment is only disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Daniels was discharged because he did not have a full release to perform his job and did not have any further leave time available. In essence, he was discharged because of his attendance. An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis.

In order for an absence to be excused, it must be for reasonable cause and it must be properly reported. 871 IAC 24.32(7). All of Mr. Daniels' absences after June 21, 2008 were due to the injuries he sustained in a car accident. The need to be absent was immediately brought to the employer's attention and he maintained contact with the employer throughout the time he was on leave. For the above reasons, the absences are all excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. It must be concluded, therefore, that Mr. Daniels was not discharged for misconduct. As such, benefits are allowed.

DECISION:

The representative's decision dated February 12, 2009, reference 01, is hereby modified. The employer filed a timely protest to Mr. Daniels' claim. He was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css