

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R CHAMBERS
Claimant

APPEAL NO. 10A-UI-00505-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**Original Claim: 11-08-09
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 9, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 18, 2010. The claimant did participate. The employer did participate through Becky Jacobson, Human Resources Manager.

ISSUES:

Was the claimant discharged for work related misconduct?

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on December 9, 2009. He did receive the decision but did not read it to know the date the appeal was due. He was late filing his appeal due to winter weather and his lack of a driver's license. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 19, 2009. The appeal was not filed until January 13, 2010, which is after the date noticed on the disqualification decision.

The claimant was employed as a production worker, full-time, beginning February 5, 2009 through November 2, 2009, when he was discharged. The claimant was discharged for altering a doctor's note that took him off work. The claimant changed the note from October 20 to October 22 so that he would not receive a point under the employer's attendance policy. When the employer learned of the claimant's alteration of the note on November 2 by checking with the physician who originally authored the note, they placed the claimant on indefinite suspension. The claimant was interviewed by the employer and admitted to the employer during their investigation, during the fact-finding interview, and at the hearing, that he altered the doctor's note to avoid getting a point under the employer's attendance policy. The claimant had received the employer's policies which prohibits falsification of any documents.

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 § 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 in a timely manner because his receipt of the decision was delayed due to inclement weather. 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). While the administrative law judge is skeptical of the claimant's allegation that it took him almost a month to get to his local workforce office, his appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant knew or should have known that falsification of the doctor's note to try and circumvent the employer's attendance policy was conduct not in the employer's best interest. The claimant owed his employer honesty in his dealing with them. The claimant admitted the falsification and that he did so in order to avoid the attendance policy. Such conduct is substantial misconduct that is sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 9, 2009, reference 01, decision is affirmed. The claimant's appeal is timely. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw