

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D BARNER
Claimant

CARROLL COOLERS INC
Employer

APPEAL NO: 11A-UI-09429-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/22/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 14, 2011, reference 01 ,that held he was discharged for misconduct on May 23, 2011, and benefits are denied. A telephone hearing was held on August 9 and September 6, 2011. The claimant participated. Pam Beardmore, HR Administrator; Bryce Beedy, Plant Manager; and Rich Toms, Controller, participated for the employer. Claimant Exhibit A and Employer Exhibits 1 and 2 were received as evidence.

ISSUES:

Whether claimant's appeal is timely.

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The department mailed the benefit denial decision to claimant to his address of record on June 14, 2011, and he received it. He went to his local Workforce center in Carroll, Iowa where he presented his appeal letter (dated June 17) and a representative faxed it to UI Appeals on that day. Later, claimant learned that no appeal had been received, and the Carroll office re-faxed to UI Appeals on July 6. On July 20, claimant learned his appeal had not been scheduled and he sent an e-mail to Appeals representative Baughman who acknowledged his appeal on that date by an e-mail

Claimant began work for the employer on October 18, 2010, and he last worked as a full-time materials purchaser on May 23, 2011. The employer discharged claimant for re-occurring mistakes in light of prior coaching to correct his work performance errors. The claimant worked as a salaried, exempt employee that meant he was not subject to the employer-employee disciplinary process. Prior to discharge, the claimant was not issued any written and/or verbal warning his job was in jeopardy.

The employer had a meeting with claimant and other receiving personnel on February 24, 2011 to discuss receiving procedure. It issued claimant a performance evaluation on March 24 which is "Approaches Expectations", 75% - 98% of objective. The employer concluded claimant should have rated higher, so it increased by his pay by one-half of one percent.

On May 12, 2011 the employer questioned a claimant about material acquired on May 3 that he entered as received on April 26. The mistake caused the employer to review the April inventory and financials. The claimant's mistake caused the employer time and money to correct.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal.

The documentary evidence corroborates claimant's testimony that a department representative faxed his appeal to UI Appeals on June 17 and July 6, 2011, and it was not received until July 20 through any fault of his own. The appeal delay was due to department error that is for

good cause. It was reasonable for claimant to entrust a department representative to submit his appeal, and he is without fault in the failure for it to be received when submitted within the ten-day period required by law.

Iowa Code section 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 administrative law judge further concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on May 23, 2011.

While it might be permissible for the employer to waive formal discipline for claimant as an exempt employee, it failed to put him on notice his job was in jeopardy to the point of termination. The claimant received a satisfactory job performance evaluation on March 24 with a modest pay increase that did not act as a warning his job was in jeopardy. While claimant did error by entering merchandise received on May 3 as April 26, it was not intentional. Job disqualifying misconduct is not established.

DECISION:

The department decision dated June 14, 2011, reference 01, is reversed. The claimant filed a timely appeal. The claimant was not discharged for misconduct on May 23, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css