

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN G HILL
Claimant

APPEAL NO: 07A-UI-00723-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

H & H TRAILER COMPANY
Employer

**OC: 12/03/06 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Calvin G. Hill (claimant) appealed a representative's December 28, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of H & H Trailer Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2007. The claimant participated in the hearing. Todd Reed and Mike Kruse appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2000. The claimant worked as a full-time customizer.

During his employment, the employer talked to the claimant about his attendance. On October 23, 2006, the claimant signed paperwork indicating he understood that if he had anymore attendance issues, the employer could discharge him. (Employer Exhibit One.)

On November 23, the claimant was arrested and incarcerated. The charges related to problems he had with his wife. The claimant was in jail for six days. On November 27 and 28 officials at the jail allowed the claimant to call the employer to report he was in jail and unable to work. The claimant was unable to contact the employer on November 29. Although the claimant was released from jail on November 29 or 30, he did not call or report to work because he assumed the employer had discharged him as a result of the paperwork he signed on October 23, 2006.

The first time the claimant contacted the employer after he had been released from jail was December 11, 2006. In addition to assuming he had been discharged, the claimant also had a number of personal matters to take care of after he was released from jail.

The claimant filed a claim for unemployment insurance benefits during the week of December 3, 2006. On December 28, 2006 a representative's decision was mailed to the claimant and employer. The decision was mailed to an address the claimant had moved from on December 22, 2006. The decision held the claimant was not qualified to receive unemployment insurance benefits as of December 3, 2006. Also, the decision informed the parties they had to appeal the decision by January 8, 2007.

The claimant did not receive the December 28, 2006 decision, but checked with his local Workforce office about the status of his claim. In January the claimant learned he needed to appeal the decision if he disagreed that he was not qualified to receive benefits. The claimant filed his appeal on January 17, 2007.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because the claimant moved to a new address by the time the December 28, 2006 decision had been mailed. Even though the claimant did not know when he talked to a local Workforce representative, he had no idea there was a deadline in which he had to file an appeal. Under the facts of this case, the claimant established a legal excuse for filing a late appeal. 871 IAC 24.35(2). Therefore, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in

isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood that as of October 23, his job was in jeopardy because of attendance issues. After the claimant was arrested and incarcerated for six days, he reasonably assumed the employer had discharged him when he did not report to work. Unfortunately, the claimant did not contact the employer when he was released from jail. If the claimant had contacted the employer the day he was released, the employer may not have discharged him. When the claimant did not contact the employer until December 11, the employer had then discharged him for excessive absenteeism by failing to call or report to work since November 28, 2006. The claimant's failure to contact the employer until December 11 amounts to an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of December 3, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 28, 2006 decision (reference 01) is affirmed. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 3, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs