

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JULIE A COMER**  
Claimant

**APPEAL 21A-UI-15835-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 04/04/21  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the June 30, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2021, at 3:00 p.m. Claimant participated. Employer participated through Thomas Moman, Executive Team Lead Asset Protection. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.  
Whether claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on June 30, 2021. Claimant received the decision on or before July 6, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 10, 2021. Claimant delivered her appeal to her local Iowa Workforce Development (IWD) office on July 6, 2021. The IWD employee who accepted claimant's appeal intended to fax the appeal to the appeals section; however, the IWD employee faxed the appeal to the incorrect number. Claimant realized the error on July 16, 2021 and asked her local IWD office to refax the appeal to the appeals section. The IWD employee faxes claimant's appeal to the appeals section on July 16, 2021. Claimant's appeal was received by the appeals section on July 16, 2021.

Claimant was employed as a part-time Cashier from October 22, 2019 until her employment with Target ended on April 8, 2021, when claimant was discharged for violation of company policy. Employer has a policy that outlines the process for team member purchases. Claimant received the policy during orientation. Employer's policy requires employees to consult a team lead before manually reducing the price of merchandise. On March 10, 2021, claimant received a verbal coaching from her team lead because claimant reduced the price of an item from

\$20.00 to \$2.00 for a coworker at the coworker's request without consulting a team lead. Claimant was reminded of the policy on March 10, 2021.

On March 11, 2021, claimant reduced the price of items for a coworker without consulting a team lead. The incident came to employer's attention on March 12, 2021. Employer did not immediately confront claimant about her actions on March 11, 2021. Employer observed claimant's behavior for two weeks as a part of its investigation. On April 8, 2021, employer discharged claimant for violation of its policy. There were no instances of claimant reducing the price of merchandise without consulting a team lead between March 11, 2021 and April 8, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa

1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

Claimant submitted her appeal to her local IWD office prior to the appeal deadline. Claimant's appeal was not received by the appeals section prior to the deadline because the local IWD office faxed claimant's appeal to the incorrect number. Any delay in receiving claimant's appeal was due to agency error. Accordingly, claimant's appeal is considered timely.

The next issue that must be determined is whether claimant's separation was disqualifying. For the reasons that follow, the administrative law judge concludes claimant was not discharged for a current act of disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

Conduct asserted to be disqualifying misconduct must be current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). Whether the act is current is measured by the time elapsing between the employer's

awareness of the misconduct and the employer's notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

Claimant last violated employer's policy on March 11, 2021. Employer became aware of the violation on March 12, 2021. Employer did not notify claimant that the violation was grounds for dismissal until April 8, 2021. Claimant's violation of the policy on March 11, 2021 was no longer a current act when she was notified and discharged on April 8, 2021. Employer has not met its burden of proving a current act of disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The appeal is timely. The June 30, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was not discharged for a current act of disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.



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Adrienne C. Williamson  
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September 17, 2021  
Decision Dated and Mailed

acw/mh