

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA A KOR
Claimant

APPEAL NO. 11A-UI-08545-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

**OC: 05-15-11
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 June 14, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 20, 2011. The claimant did participate along with her husband Garang Majouk and was represented by Linda Channon Murphy, Attorney at Law. The employer did participate through Rebecca Fischer, Recruiter. Department's exhibit D-1 was entered and received into the record. Claimant's Exhibits 1 through 4 were entered and received into the record.

ISSUES:

Was the claimant discharged due to job related misconduct?

Was the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a housekeeper full time beginning July 20, 2006 through May 23, 2011 when she was discharged. On Wednesday May 18 the claimant arrived at work and pulled her car up by the north employee entrance. She was seen by surveillance video as she walked into the facility and punched in on the time clock at 6:57 a.m. She then left building got back in her car and drove her car into the employee parking lot and parked it. The claimant then returned into the building at 7:02 a.m. and reported to her work area at 7:08 a.m. The claimant was not working for the employer while she was parking her car. The employer has approximately fourteen hundred employees. The claimant was discharged for falsifying her time card. The employer's policy, a copy of which was given to the claimant provides that if you falsify any document, including a timesheet you will be immediately discharged. When confronted by the employer the claimant was honest when asked if she had punched in before she moved her car.

The claimant's attorney participated in the fact-finding interview but was not mailed a copy of fact-finding decision as she should have been. The claimant did not file an appeal because she believed that her attorney would do so. Her attorney was deprived of the opportunity to file a timely appeal because the fact-finding decision was not sent to her.

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's attorney participated in the fact-finding interview and expected to receive a copy of the fact-finding decision but did not. Once the claimant's attorney found out that a fact-finding decision had been issued, the time to file a timely appeal had expired. 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). The claimant's attorney filed the appeal within days of her eventual receipt of it. Therefore, the 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). When an employee punches in and begins to get paid, it is reasonable for the employer to expect that they will begin working, not parking their car. With fourteen hundred employees even theft of time of five minutes would be a substantial loss on any type of ongoing basis. The employer has previously discharged other employees who also falsified their time sheets the way the claimant did. The claimant knew or should have known that when she was punching in and then going back out to park her car she was engaging in conduct not in the employer's best interests. Her conduct amounts to theft of time from the employer and falsification of her time card both of which are misconduct sufficient to disqualify her from receipt of unemployment insurance benefits.

DECISION:

The June 14, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs