

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLY A MECHEL-YOUNG
Claimant

APPEAL NO. 14A-UI-08671-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLIS INC
Employer

OC: 06/22/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 11, 2014, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on September 22, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a line operator from April 28, 2014 to June 9, 2014. She was informed and understood that under the employer's work rules; she could be discharged for accumulating four attendance points during her 90-day probation. Prior to June 2014 the claimant had been late once due to having to get new steel-toed safety shoes and absent once for medical reasons with notice to the employer.

The claimant had conflicts with a coworker, Krystal Rose. Rose was not a supervisor but constantly ordered the claimant around and was verbally abusive toward her. She had complained to her supervisor about Rose's treatment of her. The supervisor confirmed with the claimant that Rose should not be giving her instructions. Rose apologized to the claimant but nothing changed in terms of Rose's harsh treatment of the claimant.

The claimant left work early on June 6, 2014 because of Rose's bullying treatment of her. She was frustrated because the issues with Rose continued. She told the second supervisor that she was leaving work. She told him that she was ill but also told him about Rose's hostility toward her. When supervisor asked if she would be at work on June 7, she said yes. She did work on June 7

The claimant's supervisor was not at work on June 9, 2014. Rose took advantage of this. Line operators are supposed to switch jobs, but when it was Rose's turn to switch to the job of flipping parts that the claimant had been working on, she refused to do the job. The claimant became fed up and went to a foreman in another area to see if she could work there for the rest of the shift, but was told that she could not. She told the foreman that she was leaving work early.

The claimant called the Human Resources assistant on June 10, 2014 and left a message that she was not coming in to work unless the issue with Rose was resolved or she was moved to a different area. When she called the Human Resources assistant, she was told that she was discharged because her leaving work early on June 6 had put her over the point total under the attendance policy.

An unemployment insurance decision was mailed to the claimant's last-known address of record on July 11, 2014. The decision concluded she was disqualified from receiving unemployment insurance benefits and stated that the decision was final unless a written appeal was postmarked or received by the Appeals Bureau by July 21, 2014.

The claimant never received the decision. She filed a written appeal on August 15, 2014 after contacting the Iowa Workforce Development and finding out that she had been disqualified.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

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 claimant filed her appeal late because she never received the decision in the mail. The claimant did not have a reasonable opportunity to file a timely appeal.

The failure to file a timely appeal was due to an Agency error or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The appeal is deemed timely.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant left work early on April 6 due to a hostile work environment created by a coworker. She had complained to management about the issues but the problems continued. She let her supervisor know that she was leaving. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated July 11, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can