

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J CHAPMAN**  
Claimant

**APPEAL NO. 11A-UI-14773-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEST COB LLC**  
Employer

**OC: 02/28/10**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 16, 2010, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 8, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. David Hansen 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 as a truck driver from the employer from October 12, 2009, to February 27, 2010.

In January 19, 2010, the claimant expressed disapproval to an office worker who would not issue a T-Chek to him even though the claimant's supervisor had requested it. The office worker reported that he displayed inappropriate conduct, but the claimant was professional in his conversation. He was counseled about this on February 10. On February 15, the claimant collided with a tree in the Home Depot parking lot. On February 22, the claimant informed a supervisor that his truck would not fit through an opening at a customer's location. The supervisor instructed him to back through anyway. The claimant followed the instruction and the truck scrapped against a railing.

On February 23, the claimant was backing into space at a truck stop. A truck leaving the truck stop moved into the claimant's blind spot and the truck trailers scrapped together, causing minimal damage to the trailers.

As a result of the above incidents, the claimant was discharged on February 27, 2010.

An unemployment insurance decision was mailed to the claimant's last-known address of record on April 16, 2010. The decision concluded the claimant was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 26, 2010.

The claimant never received the decision within the ten-day period for appealing the decision. He had moved from his residence in Wyoming, Iowa, to Davenport, Iowa. He had set up forwarding of his mail to his new address, but the decision was never received. He first learned that he was disqualified on November 13, 2011, when he received a decision stating that he was overpaid \$825.00 due to the disqualification. He appealed the decisions on November 13, 2011.

### **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 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 claimant filed his appeal late because he never received the decision in the mail. The claimant did not have a reasonable opportunity to file a timely appeal and immediately appealed when he received notice of the decision. The appeal is considered timely.

The 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about the incidents that led to his discharge. The employer's evidence consisted of information from someone without

personal knowledge of what happened because he was not employed while the claimant worked for the employer.

No willful and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct has been shown.

**DECISION:**

The unemployment insurance decision dated April 16, 2010, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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