**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**ARMOND BALL**
Claimant

**ARAMARK SPORTS LLC**
Employer

**APPEAL NO: 09A-UI-17408-BT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 01/18/09**
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism
Iowa Code § 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Armond Ball (claimant) appealed an unemployment insurance decision dated November 3, 2009, reference 06, which held that he was not eligible for unemployment insurance benefits because he was discharged from Aramark Sports, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 30, 2009. The claimant participated in the hearing. The employer participated through Sarah Parker, Office Manager; Peter Roarke, Concession Manager; and employer representative, Gordon Peterson. Employer's Exhibits One through Three and Department Exhibit One were admitted into 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.

**ISSUE:**

The issue is whether the claimant's appeal is timely, and if so, whether the employer discharged the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on November 3, 2009. The claimant knew he was no longer receiving unemployment benefits but denies receiving the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 13, 2009. The claimant did not have a vehicle to go to the local Workforce office until November 17, 2009. The appeal was filed on November 17, 2009, which is after the date noticed on the disqualification decision.

The employer works at the stadium and arena for the University of Iowa. The claimant worked for this employer in 2008 and had problems with his attendance. He was hired again on July 9, 2009 as a full-time concession worker. At the time of hire, the employer advised the claimant

that he had to work the football games as scheduled. The employer had a meeting with its employees on August 10, 2009 and went through the employer handbook. The employer stressed the importance of working their scheduled shifts.

Subsequently, the claimant was a no-call/no-show on September 5, 2009 at the football game with the University of Northern Iowa. The employer issued him a final warning on September 8, 2009 and the claimant signed that warning. He was scheduled to work on October 3, 2009 at the game with Arkansas State but called in to report he was running late and was on his way. The claimant called back three hours later and reported he was not coming in at all. He was terminated on October 7, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.6-2 provides in pertinent part:

> 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. . . . 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.

The claimant contends he did not receive the disqualification decision. He knew he was no longer receiving benefits but did not file an appeal until November 17, 2009, which was after the deadline. The claimant contends he was unaware of the appeal deadline. The appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeatedly failing to follow directives by not showing up for the football games when his attendance was crucial. He had been verbally warned twice before he received a final warning on September 8, 2009. However, he failed to work the scheduled game on October 5, 2009 after he originally called and said he was late but was on his way. The employer did not learn the claimant was not coming to work until three hours later. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The claimant's appeal is timely. The unemployment insurance decision dated November 3, 2009, reference 06, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

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