

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M BERGESON**  
Claimant

**APPEAL NO. 09A-UI-00781-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESS INDUSTRIES**  
Employer

**OC: 08/17/08 R: 02  
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 September 8, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 16, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Kelly Decker participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Was the appeal in this case filed timely?

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a group home instructor from January 16, 2006, to August 18, 2008. She had received a written warning on August 1, 2008, for dozing off while on duty. On August 14, 2008, she was reported to have been lying down on a sofa with a blanket wrapped around her. She was placed on probation for this on August 15. She was instructed not to retaliate against any coworkers.

Co-workers reported to management that after the claimant returned to work on August 18, she was slamming doors and making threats to employees. These reports were untrue as the claimant did not slam doors or making any threats to employees. Nevertheless, the claimant was discharged on August 18 for disobeying the instruction she had been given not to retaliate against coworkers.

An unemployment insurance decision was mailed to the claimant's last known address of record on September 8, 2008. 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 September 18, 2008.

The claimant never received the decision. She did not find out about the disqualification decision until she inquired of the Workforce Development Center after attempting to refile for benefits effective December 21, 2008. She filed a written appeal on January 15, 2009, which was when she was told about the decision.

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

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

Iowa Code section 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 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 her appeal late because she never received the disqualification. The claimant did not have a reasonable opportunity to file a timely appeal. Her 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and is entitled to greater weight than the employer's hearsay evidence. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated September 8, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw