IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID G COOK
Claimant

CRST FLATBED REGIONAL INC
Employer

APPEAL NO. 13A-UI-09301-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/16/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

David G. Cook filed an appeal from a representative's decision dated July 8, 2013, reference 01, which denied unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on September 17, 2013. Claimant participated. The employer participated by Ms. Sandy Matt, Human Resource Specialist. Employer's Exhibits A and B were received into evidence.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge having 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 July 8, 2013. The decision was at the address of record specified by Mr. Cook in the normal course of the mail, however, Mr. Cook did not receive the decision as he had moved and had not provided a proper forwarding address to Iowa Workforce Development or the U.S. Postal Service. The decision contained a warning that an appeal must be postmarked or received by Appeals Section by July 18, 2013. The appeal was not filed until August 13, 2013, which is after the date noticed on the disqualification decision.

Mr. Cook had expected a favorable unemployment decision. After approximately three weeks the claimant then made an inquiry as to why he was not receiving benefits and at that time was informed that the decision had previously been sent to his address of record and the claimant filed an appeal.

Mr. Cook was employed by CRST Flatbed Regional, Inc. from June 7, 2012 until June 9, 2013 when he was discharged from employment for speeding in excess of ten miles an hour while operating a company truck. Established company policy provides for the discharge of a driver who exceeds the speed limit over ten miles per hour. Mr. Cook was aware of the rule and had signed an acknowledgement of receiving the rule.

The speeding ticket was issued in Sioux City, Iowa on May 14, 2013 by photo camera and was issued at a time when Mr. Cook was operating the company truck through a construction area.

Because the employer's rule about speeding in excess of ten miles an hour is strictly enforced, Mr. Cook was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision unless otherwise corrected is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court of Iowa has declared there is a mandatory duty to file appeals from representative's decisions within the time allotted by statute and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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 record shows that the appellant had a reasonable opportunity to file an appeal but was precluded from doing so by his failure to properly notify the agency of a change in his mailing address or in the alternative, to change his mailing address with the U.S. Postal Service to a post office box or other address where the claimant could reach his official correspondence.
The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Agency error or action of the United States Postal Service pursuant to 871 IAC 24.35(2).

In the alternative, if the appeal is determined to be timely by the Employment Appeal Board or further appealed, the administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing disqualifying misconduct on the part of Mr. Cook.

Iowa Code section 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 claimant was discharged for violation of a strict known company rule which provides for the discharge of drivers who receive a speeding citation in excess of ten miles over the posted speed limit. The evidence in the record establishes that the claimant was driving the company truck at the time that the photo-operated ticket was generated and the claimant was aware of the rule and the penalty associated with violating the company rule.

DECISION:

The representative's decision dated July 8, 2013, reference 01, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs