

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY A CORRY
Claimant

APPEAL NO. 09A-UI-06741-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAGEN INC
Employer

OC: 03/15/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Randy Corry, filed an appeal from a decision dated April 7, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 27, 2009. The claimant participated on his own behalf. The employer, Fagen, Inc., did not provide a telephone number where a witness could be contacted and did not participate. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on April 7, 2009. The claimant did not receive the decision. He contacted his local Workforce Center approximately three weeks after the fact-finding interview and was told he was disqualified. The next day he filed the appeal.

Randy Corry was employed by Fagen Construction from February 2006 until March 4, 2009 as a full-time millwright. His last job was at a Monsanto facility during which time he was subject to that customer's safety regulations. He had received training regarding these safety rules, and was notified he could be fired for violation of even a single rule. On March 4, 2009, he was seen by a supervisor in a "man basket" and he had not connected the lanyard on his safety harness to the hook in the basket. This was a violation of a the safety policy and he was discharged. Mr. Corry acknowledged he knew the rules and had not followed them on this occasion because he "got busy" and "forgot."

REASONING AND CONCLUSIONS OF LAW:

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 claimant did not receive the decision within the ten-day time period allowed for the appeal. He did file an appeal immediately upon receiving information he had been disqualified. The administrative law judge will accept the appeal as timely.

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 failing to follow a known safety rule. This was a first-time incident as he had not received any prior warnings about ignoring safety rules. The issue is not whether the employer made a correct decision in separating the claimant, but whether the

claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984).

Under the provisions of the above Administrative Code section, a one-time error in judgment does not constitute substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits. Disqualification may not be imposed.

DECISION:

The decision of the representative dated April 7, 2009, reference 01, is reversed. The appeal in this case was timely. The decision is reversed. Randy Corry is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css