

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA S MUNSON**  
Claimant

**APPEAL NO. 09A-UI-04680-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE-J INC  
FABRICTORS INC**  
Employer

**OC: 01/25/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Patricia Munson (claimant) appealed a representative's March 9, 2009 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Five-J (employer) for failure to follow instructions in the performance of her job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2009. The claimant participated personally. The employer provided a telephone number for the hearing. When the administrative law judge dialed the number twice, she heard a busy signal. The hearing began at 10:05 a.m. and ended at 10:20 a.m. on April 21, 2009. The employer did not attempt to contact the Iowa Workforce Development Appeals Section during that time and, therefore, did not participate. Exhibit D-1 was received into evidence

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in October 2007, as a full-time saw operator. The claimant signed for receipt of the employer's handbook. She understood she was to provide a doctor's note if she was absent from work for two or more days. She also understood that warnings dropped off her record after three months. The employer issued the claimant some warnings for absenteeism for personal illness and family issues more than three months prior to February 16, 2009.

On February 16, 2009, the claimant properly reported she was ill by leaving a message for the employer at 3:45 a.m. The claimant's shift started at 4:30 a.m. The claimant was so ill she could not move about. She did not see a physician. On February 17, 2009, the claimant returned to work. The employer told her she needed a doctor's note to return to work and sent

her home. The claimant was unable to provide a doctor's note. If she had known about the requirement on February 16, 2009, she would have tried to see a physician. The employer terminated the claimant on February 17, 2009, for not providing a doctor's note regarding her illness on February 16, 2009.

A disqualification decision was mailed to the claimant's address of record on March 9, 2009. The claimant did receive the decision. On March 13, 2009, she went to the Iowa Workforce Development office and wrote an appeal. The worker told the claimant that her appeal was faxed to the Appeal Section that day. On March 24, 2009, the claimant returned to the local office and discovered her appeal did not successfully transmit to the Appeals Section. The appeal was faxed again and reached the Appeals Section on March 24, 2009

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

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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.

The claimant had an appeal faxed by a departmental worker within the time period allowed by law. The worker did not make certain the fax was transmitted properly. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was discharged for misconduct. The administrative law judge concludes she was not.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 9, 2009 decision (reference 02) is reversed. The claimant's appeal is timely. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs