

were subject to termination if they tested positive for alcohol a second time after completing alcohol rehabilitation.

Pursuant to the policy, the claimant was required to submit to an alcohol test on July 19, 2005, after he reported to work with the odor of alcohol on his breath. A breath sample was properly taken from the claimant and properly analyzed using a certified breathalyzer test. The analysis disclosed the presence of alcohol in the claimant's system at a level that would demonstrate the claimant had consumed alcohol before reporting to work in violation of the employer's policy. The employer discharged the claimant on July 20, 2005, after it received the results of the alcohol test. The claimant had previously tested positive for alcohol on April 25, 2005, and had been given an opportunity for rehabilitation. He was informed that if he tested positive again for alcohol, he would be discharged.

An unemployment insurance decision was mailed to the claimant's last known address of record on August 11, 2005. 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 August 21, 2005.

The claimant filed the appeal on September 1, 2005, because he was unexpectedly hospitalized at the time that the appeal deadline expired.

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 claimant, however, did not have a reasonable opportunity to file a timely appeal due to his hospitalization. The 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence establishes that the claimant was discharged for violating the employer's drug and alcohol policy for a second time after having been given an opportunity for rehabilitation. The preponderance of the evidence establishes that the employer's policy was in compliance with Iowa law and the test was administered properly. Iowa Code § 730.5.

DECISION:

The unemployment insurance decision dated August 11, 2005, reference 01, is affirmed. The claimant's appeal is deemed timely. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/kjf