

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA M BISBEY-KUEHN
Claimant

APPEAL NO. 13A-UI-10715-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/04/13
Claimant: Appellant (5)

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 6, 2013, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 14, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Kristi Fox participated in the hearing on behalf of the employer. Exhibits A-1, A, and One were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production worker for the employer from March 12, 2012, to February 8, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant was sick and unable to work due to stomach and digestive problems after February 8 and was hospitalized for this condition February 13 to 16. Afterward, the claimant was given a medical leave of absence that expired on March 8.

The claimant did not return to work after March 8. She was absent without notice on March 11 and 12. She called in sick on March 13 and 14.

On March 14, the human resources manager, Jim Hook, sent the claimant a letter explaining that the claimant had not returned to work and had not obtained an extension on her leave of absence. She was told that she needed to supply updated medical documentation with her expected return to work date and whether she would have any restrictions. She was informed

that if she did not provide updated medical documentation or contact the human resources department to discuss her current status by March 19, 2013, the employer would have to terminate her employment with the employer.

The claimant had her father bring in a letter to Hook. The letter said, "Due to the circumstances am needing to extend my LOA. Will provide doc's as soon as I am able. Thanks for your consideration. Will update ASAP."

The claimant never provided any medical documentation taking her off work and she never contacted the human resources department to discuss her situation. As a result of the claimant's failure to follow the instructions on the letter and continued absence without notice to the employer, the employer considered her to have abandoned her job and terminated her employment as of March 22.

The claimant never saw a doctor after March 8. She decided herself in mid-July that she felt well enough to work. She called the employer and discovered that her employment was terminated. It was unreasonable for the claimant to believe that she had extended her leave of absences by submitting the letter on March 16.

An unemployment insurance decision was mailed to the claimant's last-known address of record on September 6, 2013. The decision concluded she had voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by September 16, 2013. September 16 was a Sunday so the claimant had until September 17 to file a timely appeal.

The claimant received the decision on September 17, 2013, due to some delay by the United States Postal Service. She filed a written appeal on September 20, 2013, which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she understood that the deadline was September 16 and did not know she could file an appeal until she talked to someone with the Waterloo Workforce Development Center.

REASONING AND CONCLUSIONS OF LAW:

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

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

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 understood that the deadline was September 16 and did not know she could file an appeal until she talked to someone with the Waterloo Workforce Development Center. The claimant did not have a reasonable opportunity to file a timely appeal and she filed her appeal promptly after receiving information that she could still appeal the decision.

The failure to file a timely appeal was due to delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). Although I believe it was unreasonable for the claimant to believe that she had extended her leave of absences by submitting the letter on March 16 without providing medical document or actually talking to someone in human resources, I am not convinced the claimant intended to quit. The employer terminated the claimant on March 22, 2013, for not following the instruction given to her to extend her leave.

The issue then in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

I conclude that the claimant committed misconduct when she failed to return to work and failed to follow the instructions given to her for extending her leave. She could not expect that the employer would give her an open-ended leave without medical documentation. She submitted a leave extension request that said she would provide documentation but did not follow through. The claimant's violation of the instructions given to her was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated September 6, 2013, reference 01, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css