

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY S PAULEY**  
Claimant

**APPEAL NO: 10A-UI-09257-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 04/25/10**  
**Claimant: Appellant (2)**

Section 96-5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a representative's May 21, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on August 13, 2010. The claimant participated in the hearing with her attorney, Michelle Van Wyhe. Kathy Provost, a Workforce representative, testified on the claimant's behalf. The employer's witness, Josh Moore, was contacted. When Moore learned the claimant was represented by an attorney, he requested a continuance as he had been instructed to do. Since the employer did not make a timely request for a continuance, this request was denied. Moore then indicated he had been instructed not to participate in the hearing. Since a party determines whether to participate in a hearing or not, Moore was advised that if he did not want to participate all he needed to do was to hang up. Moore did not participate in the hearing.

Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 26, 2002. She worked as a full-time overnight stocker. On April 28, a manager asked for volunteers to go the frozen food department. The claimant told the manager she could not. The claimant had yogurt to put away in the dairy department. Later when the assistant manager, Greg, asked the claimant to go to frozen food department, she did. Later, the employer informed the claimant she was discharged because she had been disrespectful when she told the manager she would not go the frozen food department. Prior to this incident, the claimant had no knowledge that her job was in jeopardy.

The claimant established a claim for benefits during the week of April 25, 2010. On May 21, 2010, a representative's decision was mailed to the claimant and employer. The decision held the claimant disqualified from receiving benefits as of April 25, 2010. The decision also informed the parties the decision was final unless an appeal was filed or postmarked on or before May 31, 2010.

The claimant received the representative's decision on May 22. She went to her local Workforce office on May 27 and filed her appeal. The Workforce representative faxed her appeal to the Appeals Section on May 27, 2010. When the claimant did not receive any information about a hearing by June 29, 2010, she contacted the Appeals Section. The Appeals Section informed her that her appeal had not been received. The claimant then filed her second appeal at her local Workforce office on June 29, 2010. The Appeals Section acknowledged receipt of the June 29 appeal.

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

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 before the May 31, 2010 deadline for appealing expired. The evidence establishes the claimant filed her appeal at her local Workforce on May 27, 2010. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct. As of April 25, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 21, 2010 decision (reference 01) is reversed. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of her appeal. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 25, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css