

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMISON C YOUNG
Claimant

APPEAL NO. 11A-UI-04792-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 01/30/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 3, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Maxine Piper represented the employer. John Andrews testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits?

ISSUES:

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

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

FINDINGS OF FACT:

The claimant started working for the employer in December 2010. The claimant worked part-time as a loan servicing specialist. The employer informs new employees that if they have two attendance occurrences in the first 60 days of employment, the employer may discharge them.

The claimant left work early on December 29, 2010, when his daughter became ill at daycare and he was the only family member available to pick her up. On January 8, 2011, the claimant reported to work but became sick before his shift started. After letting a supervisor know he had gotten sick before he started work, he left work because he was ill.

On January 11, the employer gave the claimant a final written warning for his attendance. The claimant understood that if he had another attendance issue, he would be discharged.

On January 29, 2011, the claimant left for lunch and did not return. He called Mr. Andrews' phone later that afternoon and left a message that he had been involved in an accident and was unable to return to work that day. The claimant was using his girlfriend's car and someone hit it

while the car was parked in a mall parking lot. The accident damaged a wheel to the extent the claimant could not drive the vehicle.

Although the local police were called, they indicated they could not do anything, since the accident occurred on private property. Since the car was not covered for an uninsured motorist, the insurance company was not contacted. The claimant did not think to take pictures of the car to show the employer how much the car had been damaged.

On February 3, the employer discharged the claimant for excessive absenteeism.

The claimant established a claim for benefits during the week of January 30, 2011. On March 3, 2011, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of January 30, 2011. The determination also informed the parties this was final unless an appeal was filed or postmarked no later than March 13, 2011.

The claimant received the determination by March 5. On March 8, the claimant mailed his appeal to the Appeals Section. The claimant called the Appeals Section on April 11 to find out the status of his appeal. He then learned the Appeals Section did not have a record of his appeal. The person he talked to advised him to go to his local Workforce office and file another appeal. The claimant filed his second appeal on April 11 at his local Workforce office.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 first appeal was filed before the March 14 deadline for appealing expired. (Since March 13 is a Sunday, the deadline is automatically extended to Monday, March 14, 2011.) Even though the Appeals Section indicated they had not received the claimant's first appeal, the claimant's testimony that he mailed his appeal on March 8 is credible. Therefore, 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 him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). Even though the claimant had three attendance occurrences in less than two months, he was either ill or established other reasonable grounds for his absence. Even though the claimant had too many attendance occurrences for a new employee, he did not commit work-connected misconduct. Therefore, as of January 30, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's March 3, 2011 determination (reference 01) is reversed. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of his appeal. Even though the employer had justifiable business reasons for discharging the claimant, he did not commit work-connected misconduct. As of January 30, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw