

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDRIA B AJOK**

Claimant

**APPEAL NO. 13A-UI-01997-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 12/09/12**

**Claimant: Appellant (2)**

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 January 14, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of interpreter, Magdy Salama. Javier Sanchez participated in the hearing on behalf of the employer. Exhibit A-1 was 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 for the employer as a production worker from June 22, 2009, to December 8, 2012. 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 and were subject to discharge after receiving nine attendance points in a 12-month period. Attendance points are assessed for unscheduled absences and tardiness.

The claimant was issued a warning in September 2012 for having five attendance points. He received a final written warning on October 10, 2012, because he had eight attendance points at that time. He had two instances of reporting late for work, for which he received half points, and the remaining points were all due to sickness properly reported. After the final warning, the claimant was absent due to illness on October 22, November 5, and December 3, 2012, with proper notice to the employer. After the December 3 absence, the claimant was again at eight points.

The claimant was sick and unable to work on December 10, 11, and 12. He called in properly each day. The employer discharged the claimant for violating the attendance policy when he reported to work on December 13, 2012.

An unemployment insurance decision was mailed to the claimant's last-known address of record on January 14, 2013. The decision concluded he 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 January 24, 2013.

The claimant did not receive the decision within the ten-day period for appealing the decision. When he did not receive the decision, he contacted the IWD Office and discovered he had been disqualified. He filed a written appeal by fax on February 20, 2013.

### **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 his appeal late because he did not receive the decision until after the appeal deadline was over. He did not have a reasonable opportunity to file a timely appeal and 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. The appeal is deemed timely.

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. 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).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7). In this case, no willful and

substantial misconduct has been proven. The claimant's absences were due to illness and proper notice was given to the employer.

**DECISION:**

The unemployment insurance decision dated January 14, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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