

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAMMI P NANKHATI**  
Claimant

**APPEAL NO. 13A-UI-13569-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES, INC.**  
Employer

**OC: 10/28/12**  
**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 September 20, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 6, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, George Sayavong. Cheryl Rodermund participated in the hearing on behalf of the employer with a witness Brittany Sickles. Exhibits A-1 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 for the employer as a sanitation worker from February 7, 2005, to August 16, 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 and were subject to discharge under the employer's no fault attendance policy after receiving ten points. The claimant received a warning regarding her attendance April 2, 2013, because she was at seven points.

The claimant was absent from work on August 19, 20, and 21. She called in absent each day. The claimant had traveled to Laos in April 2013 because of her mother was critically ill. She had not seen her mother for many years. Her mother died while she was there. After she returned, there were times when she became emotionally overwrought due to dealing with her mother's death. On August 19, 20, and 21, the claimant felt she was not able to work due to grief over her mother's death.

On August 21, the human resources business partner, Brittany Sickles left a message for the claimant asking about why she was missing work. The claimant returned the call on August 22

and made an appointment to come in on August 23. When she came in on August 23, she was discharged because after missing work on August 21. She had ten attendance points.

An unemployment insurance decision was mailed to the claimant's last-known address of record on September 20, 2013. The decision concluded she 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 September 30, 2013.

The claimant did not receive the decision within the ten-day period for appealing the decision. She had traveled to Laos to visit family and attend events to commemorate the 100th day after her mother's death. She was not filing for unemployment insurance benefits during this time.

She returned to Iowa on December 9, 2013, and after finding the decision and getting someone to explain it to her, she filed a written appeal on December 12, 2013.

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

The 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 did not have a reasonable opportunity to file a timely appeal because she was unaware of the decision until she returned from Laos on December 9. She acted promptly in filing her appeal on December 12. 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.

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 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, 11 (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 substantial and 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).

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).

The claimant was discharged after she reached ten attendance points under the employer's no-fault attendance policy. The final days of absence leading to her termination were properly reported and were based on reasonable grounds for being absent due to grief and being emotionally distraught.

**DECISION:**

The unemployment insurance decision dated September 20, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she 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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