

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAILYNNE R BLAKESLEE

Claimant

APPEAL 22A-UI-08916-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 03/07/21

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge from Employment

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 8, 2022, claimant Shailynne R. Blakeslee filed an appeal from the May 26, 2021 (reference 03) unemployment insurance decision that denied benefits based on a determination that claimant was discharged for disqualifying misconduct. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, May 24, 2022. Appeal numbers 22A-UI-08916-LJ-T, 22A-UI-08917-LJ-T, and 22A-UI-08918-LJ-T were heard together and created one consolidated record. The claimant, Shailynne R. Blakeslee, participated. The employer, Casey's Marketing Company, did not appear for the hearing and did not participate in the hearing. Department Exhibits D-1 and D-2 were offered and admitted into the record.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant discharged from employment for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed with Casey's Marketing Company as a part-time cashier. She believes her employment began sometime in 2020. Claimant's employment ended on March 5, 2021, when she was discharged.

Claimant was working her shift several days she was discharged. Around 10:00 p.m., claimant's replacement arrived at work, as claimant was scheduled to go home. He notified her that someone had defecated on the floor of the men's restroom, and he instructed her to clean it up. Claimant said no because she was on the register and assisting customers. At that point, the replacement walked out of the store and did not return to work for the remainder of his shift. At that point, it was just claimant and the pizza maker staffing the store. Claimant attempted to call the manager, who did not answer the phone. She then called the assistant manager, who eventually answered the phone and agreed to come in.

When the assistant manager arrived around 1:00 a.m., she called claimant the “R-word” for failing to clean up the fecal matter. Claimant had previously told the assistant manager that she was not comfortable being called the “R-word.” This was in response to the assistant manager using the “R-word” as a slur toward claimant, who is autistic. This second instance upset claimant, and she called her mother. When her mother arrived at the store, both claimant and her mother spoke to the assistant manager. Claimant and her mother explained that claimant had not been able to address the fecal matter in the bathroom because she was not permitted to leave the bathroom. She had been trained to never, under any circumstances, leave her register unattended. Claimant could not let the pizza maker watch the register, because he was not trained in how to operate the register.

When claimant left the store that evening, she thought everything was resolved. Several days later, claimant came into the store to check her schedule. She saw she was not on the schedule any longer. The manager then told claimant that the employer did not need her anymore. Claimant asked what happened, and the manager referenced “the other night” and repeated, “We don’t need you anymore.” Claimant had never received any warnings during her employment and she was not aware that her job was in any jeopardy.

Claimant received the May 26, 2021 (reference 03) decision that notified her that she was ineligible for benefits because she had been discharged. She believes that she received the decision in mid-June 2021. Claimant and her mother read the decision together. They had difficulty understanding the decision and how it affected claimant’s benefits. Both claimant and her mother tried to call the agency multiple times, but they kept getting put on hold and could not get through. Claimant did not know she could appeal the decision at that time.

Later, claimant received the two overpayment decisions in the mail. Claimant and her mother reviewed those decisions when they arrived. They learned for the first time that claimant could appeal the decisions if she disagreed with them. Claimant then filed an appeal on April 8, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark

of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

In this case, when claimant received the decision regarding her separation from employment, she did not understand it. Both claimant and her mother attempted to call the agency multiple times, but they were unable to reach anyone who could help them. The administrative law judge believes claimant's testimony and finds that she made sufficient attempts to contact the agency and make sense out of the decision. When claimant received the overpayment decisions, she and her mother were able to get assistance and exercise appeal rights. Claimant's appeal shall be accepted as timely.

The next issue is whether claimant's separation is disqualifying. Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

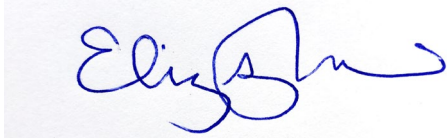
Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established...

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. In this situation, claimant presented credible testimony that she was placed in a situation with no optimal outcome: she was expected to both clean the bathroom and staff the register at all times, and she was the only employee assigned to the convenience store. Claimant chose to follow the training she received and staff the register, protecting the employer's assets and leaving the bathroom dirty until help arrived. The employer has presented nothing to indicate claimant engaged in any conduct amounting to disqualifying misconduct. Benefits are allowed.

DECISION:

The May 26, 2021 (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

May 26, 2022
Decision Dated and Mailed

lj/lj