

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEBIT C LOKORI
Claimant

APPEAL NO. 10A-UI-13976-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 06/06/10
Claimant: Appellant (1)

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 August 3, 2010, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 3, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jenny Mora 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 January 19, 2009, to May 7, 2010. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after three days of absence without notice to the employer.

The claimant called in sick on May 10, 11, and 12. The claimant was absent from work without notifying the employer on May 13, 14, 15, and 17.

The employer discharged the claimant due to his four days of unreported absence.

An unemployment insurance decision was mailed to the claimant's last-known address of record on August 3, 2010. The decision concluded the claimant voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 13, 2010.

The claimant did not receive the decision. He filed a written appeal on October 7, 2010, after he visited his local Workforce Development Center and was told he had been disqualified.

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 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 never received the decision. The claimant did not have a reasonable opportunity to file a timely appeal. His appeal is considered 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Jenny Mora's testimony that the claimant had called in sick for three days and then was absent without notice for four consecutive days is credible. The claimant's testimony that he had called in and was told he had too many points and was fired and never had any days when he was absent without notice is not credible. Mora explained that if the claimant had been absent with proper notice, he would not have been discharged but instead would have been placed on a 90-day attendance contract. I believe the claimant probably called the employer, but it was after his no-call/no-shows that led to his termination. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 3, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css