

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNTAY M MENUY

Claimant

APPEAL NO: 10A-UI-17550-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FULL CIRCLE SERVICES INC

Employer

OC: 11/07/10

Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay
Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 16, 2010, reference 03, that held the claimant was not discharged for misconduct on November 7, 2010, and benefits are allowed. A telephone hearing was held on January 31, 2011. The claimant did not participate. Chris Forman, Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The employer received department decisions mailed on December 16, 2010 reference 03 & 04. The decisions provide an appeal deadline date of December 26 that is a Sunday. The employer faxed its appeal to the department on December 27. The employer did not receive a department decision dated December 9.

The claimant did not respond to the hearing notice.

The claimant began part-time employment as a counselor on December 30, 2009, and last worked for the employer on November 7, 2010. On November 6, the claimant was responsible for supervising two mentally retarded male adults. One adult became upset with the claimant, and the on-call supervisor made two trips to the facility to speak with the complainant in order to calm him down. On the second occasion, the claimant did not come outside to join the supervisor who was speaking with the complainant, and he did not observe claimant watching from the facility.

The employer confronted claimant on November 8 about the incident. She admitted letting the complainant go outside to smoke without her being present that might be for a period of 15 minutes. Although the claimant had received no prior warning, she was discharged for negligent supervision.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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.

871 IAC 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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the employer filed a timely appeal.

The employer did not receive the December 9 department decision due to US Postal service delivery error or department error. The department issued multiple decisions (#3) on the same employment separation issue that indicates confusion. The employer received two decisions on December 16 and the appeal deadline is extended from Sunday (26th) to the next business day (27th) that the employer faxed an appeal.

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.

871 IAC 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.

The administrative law judge further concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on November 7, 2010.

An isolated incident of negligence without any prior warning on the same issue does not constitute job disqualifying misconduct. While the claimant might have been lax in her supervision method, it does not indicate a wrongful intent to violate any employer policy to the point of misconduct.

DECISION:

The department decision dated December 16, 2010, reference 03, is affirmed. The claimant was not discharged for misconduct on November 7, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs