

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY J WALKER
Claimant

OPTIMAE LIFESERVICES INC
Claimant

APPEAL 22A-UI-04487-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/09/22
Claimant: Appellant (2)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kimberly L Walker, the claimant/appellant, filed an appeal from the January 28, 2022 (reference 01) unemployment insurance (UI) decision that denied benefits because of a January 15, 2022 discharge from work. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2022. Ms. Walker participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Walker's appeal filed on time?
Did the employer discharge Ms. Walker for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Walker at the correct address on January 28, 2022. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 7, 2022.

Ms. Walker is unhoused and uses a family member's address to receive mail. Ms. Walker checks with her family member about her mail every couple of days. Ms. Walker received sometime around February 7, 2022. Ms. Walker filed an appeal online on February 14, 2022. The appeal was received by Iowa Workforce Development on February 14, 2022.

The administrative law judge further finds: Ms. Walker began working for the employer on August 9, 2021. She worked as a full-time direct support professional. Her employment ended on January 5, 2022.

Part of Ms. Walker's job was to drive clients to various places and appointments in the employer's van. After Ms. Walker finished her shift on January 4, 2022, she parked the

employer's van in the work parking lot and slept in the van because she is unhoused. The employer knew that Ms. Walker was unhoused and had previously told Ms. Walker that she could keep the van overnight if she worked the following day. Ms. Walker worked on January 4 and on January 5.

On January 5, after she worked her shift, Ms. Walker's supervisor sent her a text message asking her to come to the office. Ms. Walker went to the office. Ms. Walker's supervisor told her that her employment was terminated for illegal use of the employer's van, and for taking clients to her house in the employer's van. Ms. Walker denied taking clients to her house since she is unhoused, and she denied taking clients to the house where she receives her mail. On the day in question, Ms. Walker stopped by her credit union in the area where she had taken clients. The employer had previously told Ms. Walker that she could use the employer's van to run occasional errands.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Walker's appeal was filed on time.

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).

Ms. Walker did not receive the decision before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Walker filed her appeal within ten days of when she received the decision. Ms. Walker's appeal was filed on time.

The administrative law judge further concludes: The employer discharged Ms. Walker from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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

(4) *Report required.* The claimant's statement and 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 cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this case, the employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Ms. Walker. Ms. Walker denied taking client to her home since she is unhoused, and the employer gave Ms. Walker permission to keep the van overnight when she worked two consecutive days. The employer has failed to meet its burden. Benefits are allowed.

DECISION:

Ms. Walker's appeal was filed on time. The January 28, 2022, (reference 01) unemployment insurance decision is REVERSED. The employer discharged Ms. Walker from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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April 5, 2022
Decision Dated and Mailed

dz/mh