

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DESTINY J SCHOOLFIELD  
8117 HICKORY ST  
DEXTER IA 50070**

**SHREE HARI INC  
DAYS INN  
4845 MERLE HAY RD  
DES MOINES IA 50322-1986**

**Appeal Number: 04A-UI-00832-DWT  
OC 11/23/03 R 01  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Shree Hari, Inc., doing business as Days Inn (employer), appealed a representative's January 9, 2004 decision (reference 02) that concluded Destiny J. Schoolfield (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2004. The claimant participated in the hearing. Jerry Gonzalez, the desk and sales manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant most recently worked for the employer from January 2003 through November 23, 2003. The employer hired the claimant to work 16 hours a week on Monday and Tuesday nights. The claimant also worked at another motel the general manager owned on Wednesday and Thursday nights.

In mid-September, the employer asked the claimant if she could also work Sunday mornings. Initially, the claimant indicated she could not work Sunday mornings, but later agreed to work every other Sunday. The employer told her this was fine until the employer could hire someone to work these hours on a regular basis.

The employer told the claimant on December 1 that her services were no longer needed because the employer had hired someone to work Sunday morning and Monday and Tuesday night, or the hours the claimant worked. The claimant's last day of work for the employer was November 23, 2003.

The claimant established a claim for unemployment insurance benefits during the week of November 23, 2003. On January 9, 2004 a representative's decision was mailed to the claimant and the employer. This decision indicated the claimant was qualified to receive unemployment insurance benefits as of November 23, 2003.

The employer did not receive a copy of the January 9, 2004 decision. The employer called the Department on January 23, 2004 because the employer received information at the fact-finding interview when a decision would be mailed. On January 23 a representative told the employer a decision had been issued on January 9, 2004 that was favorable to the claimant. The employer faxed an appeal to the Appeals Section immediately on January 23, 2004.

The employer's mail is sometimes misrouted because there are seven motels in close proximity of one another.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code §96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 employer's appeal was filed after the January 19, 2004 deadline for appealing expired.

The next question is whether the employer 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 evidence establishes the employer did not have a reasonable opportunity to file a timely appeal.

The employer's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The employer established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the employer's appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 (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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for hiring someone to replace the claimant when she could not always work on Sunday mornings. For unemployment insurance purposes, the claimant did not commit work-connected misconduct when she did not agree to change her employment relationship by working additional hours on Sunday. As a result, the claimant is qualified to receive unemployment insurance benefits as of November 23, 2003, provided she meets all other eligibility requirements.

#### DECISION:

The representative's January 9, 2004 decision (reference 02) is affirmed. The employer did not file a timely appeal, but had a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the employer's appeal. The employer discharged or replaced the claimant for compelling business reasons. These reasons do not constitute work-connected misconduct. As of November 23, 2003, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b