

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI L HARADA**  
Claimant

**APPEAL NO. 11A-UI-05245-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLMARK INC**  
Employer

**OC: 02/20/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(8) – Current Act of Misconduct  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Jodi L. Harada filed an appeal from an unemployment insurance decision dated March 22, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on May 25, 2011. Ms. Harada participated on her own behalf. Her husband, John Harada, accompanied her but was not called to testify. Exhibit D-1 was admitted into evidence.

**ISSUE:**

Does the administrative law judge have jurisdiction to rule on the merits of the case?  
Was the claimant discharged for a current act of misconduct?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Jodi L. Harada appealed states that it would become final unless an appeal was postmarked by April 1, 2011 or received by the agency by that date. Ms. Harada faxed an appeal to the agency on March 29, 2011. The appeal was not docketed until Ms. Harada faxed a follow-up containing a copy of the original appeal on April 19, 2011.

Ms. Harada was employed by Wellmark, Inc. from January 20, 2010 until she was discharged February 21, 2011. She worked as a nurse case manager. During training in December 2010 Ms. Harada accessed her husband's medical insurance records. Ms. Harada believed that she was authorized by the company to do so under such circumstances. Her husband did not object to her having access to his information. Wellmark, Inc. discharged Ms. Harada on February 21, 2011 for the December 2010 incident.

## REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of the case. He does. Iowa Code § 96.6-2 gives parties ten days from the date of a fact-finding decision to file an appeal. Additional time may be granted if the delay in filing the appeal is the fault of the agency or the U.S. Postal Service. See 871 IAC 24.35. The evidence persuades the administrative law judge that Ms. Harada had submitted an appeal on March 29, 2011 and that it was through no fault of her own that it was not docketed on a timely basis. Concluding that the delay was the fault of the agency, the administrative law judge concludes that he has jurisdiction to rule on the merits of the case.

The remaining question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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 employer has the burden of proof. See Iowa Code § 96.6-2. As noted above, the employer did not participate. Among the elements an employer must prove is that the final incident leading to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The evidence establishes that the incident leading to Ms. Harada's discharge occurred approximately two months before her discharge. The employer has presented no evidence

explaining the delay. Whether or not the claimant's action in December was an act of misconduct, it was not a current act. No disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated March 22, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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