IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KEBE D JADEN
Claimant

FARMLAND FOODS IN
Employer

APPEAL NO: 10A-UI-14838-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/26/10
Claimant: Appellant (5)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 15, 2010 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Jessica Garcia and Rick Henrich appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUES:

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

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

FINDINGS OF FACT:

The claimant started working for the employer on June 2, 2010. He worked full time.

On Thursday, September 23, the claimant and other employees learned they were scheduled to work nine hours on Saturday, September 25. When the claimant first reported to work on September 25, he and another employee asked a supervisor if they could leave by noon. The supervisor put the claimant's name on a list. Later that morning, Henrich told the claimant that his request to leave by noon was denied because the employer needed him to work nine hours that day. At noon the claimant again asked and Henrich again denied his request to leave at noon. The claimant wanted to leave to go to a soccer game.

The other employee, who had also asked to leave at noon, stayed at work. The claimant left work around noon. The claimant understood he did not have permission to leave work early, but assumed he would only get an attendance point. The employer considered the claimant to have quit when he left work early on September 25, 2010. The claimant's employment ended on September 25, 2010.

The claimant established a claim for benefits during the week of September 26, 2010. On October 15, 2010, a representative's determination was mailed to the claimant and employer. The determination concluded the claimant was not qualified to receive unemployment insurance benefits as of September 26, 2010. The determination also informed the parties that this was the final decision unless a party filed an appeal on or before October 25, 2010.

The claimant received the representative's determination by October 22, 2010. He did not understand how to appeal the determination. He asked his landlord about the determination. The claimant's landlord told the claimant he needed to appeal the determination and advised him to contact his local Workforce representative. The claimant went to a Workforce office on October 27, 2010. He filed his appeal on October 27, 2010.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code section 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 claimant's appeal was filed after the October 25, 2010 deadline for appealing expired.

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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not understand how to appeal. Since English is not the claimant's primary language, he asked his landlord about the determination he received. After his landlord talked to the claimant, he went to his local Workforce office and filed an appeal on October 27, 2010.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. Since English is not the claimant's primary language and he did not understand how to appeal, the claimant took reasonable steps in finding out what he needed to do to file his appeal, which he did on October 27, 2010. Under these circumstances, the Appeals Section has jurisdiction to address the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his employment when he left work early on September 25, 2010. Instead, the employer discharged him for leaving work after telling him he could not leave early.

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 claimant knew and understood the employer had not granted him permission to leave work early or by until noon on September 25. Even though the employer denied the claimant's request to leave early, the claimant disregarded the employer's interests and left work early. The claimant assumed the employer would give him a point for leaving work early. The claimant knew the employer would not like the fact he left work early, but did not think the employer would discharge him.

The claimant's failure to work as scheduled after the employer denied his request to leave work early shows an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of September 26, 2010, the claimant is not qualified to receive benefits.

Since claimant is disqualified from receiving benefits an issue of refusing to return to work on November 30 will not be remanded to the Claims Section to investigate.

DECISION:

The representative's October 15, 2010 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not file a timely appeal, but since he did not understand how to appeal because English is not his primary language, the Appeals Section will address the merits of his appeal. The claimant did not voluntarily quit his employment. Instead the employer discharged him for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs