

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DRAKE D RUCHTI
Claimant

SIOUX CITY DQ INC
Employer

APPEAL 20A-UI-03544-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On April 29, 2020, Drake Ruchti (claimant/appellant) filed an appeal from the March 11, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on May 19, 2020, at 3 p.m. The parties were properly notified of the hearing. Claimant participated personally. Claimant's father, Jason Ruchti, assisted claimant during the hearing and participated as a witness. Sioux City DQ Inc. (employer/respondent) participated by Concept Manager Keith Comstock.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the separation a layoff, a discharge for misconduct, or a voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on March 11, 2020. That was claimant's correct address on that date. However, claimant did not receive the decision. Claimant has had issues with his mail for some time.

The unemployment insurance decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 21, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. This extended the appeal deadline to March 23, 2020.

Claimant was discharged by employer on February 20, 2020. After initially filing for benefits effective February 16, 2020, claimant secured other employment. He determined not to pursue his claim for benefits for that reason. However, claimant was then discharged from the subsequent employer on March 20. Claimant then tried to file for benefits online – unsuccessfully – for approximately two weeks.

Finally, on April 5, 2020, claimant contacted the Department for assistance. That is when he first learned of the March 11, 2020 decision finding him ineligible for benefits. Claimant reopened his claim at that time with the help of a Department representative and believed the representative also filed an appeal at that time. After not hearing anything further from the Department for several weeks, claimant reached back out on April 29 and learned no appeal had been filed. Claimant filed an appeal at that time with the help of a Department representative.

Claimant was discharged by manager Felicia Mathis on February 20, 2020. She did not give a reason for discharging him at that time. Claimant had only been disciplined once, near the beginning of his employment in June 2019, for not properly closing the store. Claimant also acknowledged he may have cursed while working. However, he was unaware of any customer complaints relating to that and was never disciplined for doing so.

Claimant acknowledges there was an incident involving Shift Leader Larry Hanson approximately a week prior to his discharge. Claimant asked for Hanson's assistance and Hanson then threatened claimant and ultimately sent him home. Claimant brought this issue to Mathis shortly thereafter but she told claimant she did not wish to hear about it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the March 11, 2020 (reference 01) unemployment insurance decision that denied benefits is REVERSED. The administrative law judge concludes the claimant's appeal was timely. The administrative law judge further finds employer has not proven claimant's discharge was for misconduct. Claimant is therefore eligible for benefits, provided he meets all other eligibility requirements.

I. Is the appeal timely?

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)(a) 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 on 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)

(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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and he did not have a reasonable opportunity to file a timely appeal. Claimant subsequently reasonably believed an appeal had been filed with the assistance of a Department representative. However, he later learned an appeal had not been filed, and he took an appeal at that time.

The administrative law judge finds the delay in appealing was due to delay by the United States Postal Service and then due to error or misinformation of the Department. The appeal is therefore timely. Because the appeal is timely, the administrative law judge has jurisdiction to consider the issue of separation from employment.

II. Was the separation a layoff, a discharge for misconduct, or a voluntary quit without good cause?

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Comstock testified claimant was discharged due to customer complaints of claimant cursing at the store and for not performing his job duties correctly. However, Comstock was unable to provide details on these alleged incidents, such as when they occurred or what specifically claimant was disciplined for. On the other hand, claimant provided credible, first-hand testimony that he was unaware of any such complaints and had never been disciplined other than for closing the store incorrectly early in his employment. Based on the evidence presented, the administrative law judge finds the information presented by claimant to be more reliable than that presented by employer, and factual disputes were resolved accordingly.

Claimant was discharged by manager Felicia Mathis on February 20, 2020. She did not give a reason for discharging him at that time. Claimant had only been disciplined once, near the beginning of his employment in June 2019, for not properly closing the store. Claimant also acknowledged he may have cursed while working. However, he was unaware of any customer complaints relating to that and was never disciplined for doing so. Finally, the incident involving Hanson does not appear to have constituted misconduct by claimant or to have otherwise played any role in his discharge.

The administrative law judge finds employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant's failure to properly close the store near the beginning of his employment is not current act of misconduct. Furthermore, even taking into account claimant's acknowledgement that he may have cursed while working, there is insufficient evidence to show when this occurred; whether there were customer complaints related to cursing; and whether the cursing rose to the level of substantial, job-related misconduct.

The administrative law judge is simply unable to find claimant's discharge was due to misconduct based on the evidence presented. Claimant is therefore eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The March 11, 2020 (reference 01) unemployment insurance decision that denied benefits is REVERSED. The administrative law judge concludes the claimant's appeal was timely. The administrative law judge further finds employer has not proven claimant's discharge was for misconduct. Claimant is therefore eligible for benefits, provided he meets all other eligibility requirements.



Andrew B. Duffelmeyer
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May 22, 2020
Decision Dated and Mailed

abd/mh