

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEWJ GOODPASTER**  
Claimant

**APPEAL NO. 13A-UI-08413-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 06/16/13**  
**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 3, 2013, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 21, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Eloisa Baumgartner participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence.

**ISSUES:**

Did the claimant file a timely appeal?  
Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from July 19, 2011, to May 28, 2012. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after five days of absence without proper notice.

The claimant was absent from work without notice to the employer on May 29. He was arrested and lodged in jail from May 30 to June 7 for alleged violation of the terms of his probation. He was on probation for a domestic abuse of his wife and given a deferred judgment. The arrest was for alleged domestic abuse. The claimant was with his wife because she was suicidal but did not abuse her.

The claimant was absent from work June 2, 3, 4, 5, and 6 without notifying the employer. As a result of his absences without notice on May 29 through June 6, the employer discharged the claimant effective June 6.

After the claimant was released from jail on June 7, he contacted his union representative on June 10. Through the claimant's union representative, he believes the employer will rehire him if the charges against him are dismissed.

An unemployment insurance decision was mailed to the claimant's last-known address of record on July 3, 2013. The decision concluded he had voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by July 13, 2013, or the next business day of July 15.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal by mail from Perry, Iowa, on July 15, 2013. The letter was postmarked in Des Moines, Iowa, on July 16, 2013.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2. An appeal in this case was mailed from Perry on July 15 and is deemed timely.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The claimant did not quit his employment, he was discharged under the employer's attendance policy.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

I believe the employment manager's testimony that the claimant was absent without notice from May 29 through June 6. The claimant alleged that his wife called in for him on two of the days in question, but presented no proof on this point. The claimant is subject to disqualification for excessive unexcused absenteeism. The fact that the employer might rehire the claimant does not change the outcome in this case.

**DECISION:**

The unemployment insurance decision dated July 3, 2013, reference 01, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs