

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALE J ROBBINS

Claimant

APPEAL 20A-UI-12624-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC

Employer

OC: 04/12/20

Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Dale J Robbins, filed an appeal from the September 30, 2020, (reference 01) unemployment insurance decision that denied him unemployment insurance benefits. The claimant filed his appeal on October 13, 2020. The parties were properly notified of the hearing. A telephone hearing was held on December 2, 2020. Claimant participated and testified. Employer did not register and did not participate. Department's Exhibit 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUES:

Did claimant file an appeal on time?

Was the claimant laid off, discharged for disqualifying job-related misconduct or voluntarily 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 correct address on September 30, 2020. Claimant received the decision but isn't sure when he received it. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 10, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. October 10, 2020 was a Saturday, October 11, 2020 was a Sunday and October 12, 2020 was a holiday. Therefore, the deadline was extended to October 13, 2020. Claimant appealed the decision by United States Postal Service mail. The appeal was received by Iowa Workforce Development on October 13, 2020.

The administrative law judge further finds: Claimant began working for employer in January 9, 2006. Claimant worked as a full-time machinist. Claimant was separated from employment when he was discharged.

In January 2017, claimant was issued a warning for not getting along with his supervisor. Claimant was upset with his supervisor because his supervisor kept putting claimant on jobs claimant could not perform due to claimant's age. Claimant's nephew also worked at the same employer and claimant believed that claimant's supervisor was bothering claimant's nephew so claimant would stand up for his nephew.

In April 2019, claimant's supervisor told claimant in a conversation in the supervisor's office that claimant was creating a hostile work environment by raising his voice to another employer who was talking about religion. During this meeting, claimant again raised the issue of his supervisor bothering claimant's nephew and again stood up for his nephew.

Claimant suffered from a gastrointestinal illness and was on FMLA leave around the time he was separated from his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant's appeal was filed on time.

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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law

judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, claimant's appeal deadline was October 13, 2020. The September 30, 2020, (reference 01) unemployment insurance decision states that it become final on October 10, 2020 unless that date falls on a Saturday, Sunday, or legal holiday. October 10, 2020 was a Saturday, October 11, 2020 was a Sunday and October 12, 2020 was a holiday so claimant's appeal deadline was extended to October 13, 2020. Claimant's appeal was received by Iowa Workforce Development on October 13, 2020. The claimant's appeal is considered filed on time.

For the reasons that follow, the administrative law judge concludes: the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer did not participate in the hearing, making it difficult to determine the most recent incident leading up to claimant's separation from employment. This is especially difficult given that claimant was on FMLA leave around the time of his separation. In the event that the separation was related to that leave, the claimant returned to work after his illness and offered to perform services to the employer. Iowa Admin. Code r. 871-24.26(6)(a). Therefore, the claimant's leaving employment was attributable to the employer.

871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established....

In the end, the claimant agrees that he was discharged from employment but denies that it was for misconduct. The employer did not participate in the hearing and provided no evidence of misconduct by the claimant. Therefore, the employer has not met its burden in establishing disqualifying job misconduct.

DECISION:

The claimant's appeal is timely. The September 30, 2020, (reference 01) unemployment insurance decision denying benefits is reversed. Benefits are allowed, provided claimant is otherwise eligible.



Daniel Zeno
Administrative Law Judge

December 21, 2020
Decision Dated and Mailed

dz/mh