

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L SEE
Claimant

APPEAL NO: 09A-UI-19135-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/27/09
Claimant: Appellant (5/R)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's November 18, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the employer's account was not subject to charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on February 4, 2010. The claimant participated in the hearing. Tony Luse, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing 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 November 17, 2008. He worked as a full-time employee. The claimant received information that if an employee was unable to work as scheduled the employee needed to contact the employer 30 minutes before a scheduled shift. The claimant also received information that if an employee did not call or report to work for three days, the employer considered the employee to have abandoned the employment.

The claimant's last day of work for the employer was February 3, 2009. When the claimant received a message that his brother had been hospitalized in Washington, he immediately left and went to Washington. Although the claimant was scheduled to work February 4, 5 and 6, he did not call the employer to report he had gone to Washington or why he was not at work as scheduled. The claimant did not return to work until February 11, 2009. By the time the claimant returned to work, the employer no longer considered him an employee.

The claimant established a claim for benefits during the week of September 27, 2009. On November 18, 2009, a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits because he had voluntarily quit his employment. The decision also indicated the decision was final unless an appeal was filed or postmarked no later than November 28, 2009.

Unfortunately, the claimant had been incarcerated about a week before the November 18 decision was mailed. The claimant was not released from jail until December 21, 2009. Upon his release, the claimant read his mail and discovered the November 18 decision. He immediately went to his local Workforce office and filed an appeal on December 21, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 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 decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 November 30 2009 deadline for appealing expired. Since November 28 was a Saturday, the claimant had until November 30, 2009, to file a timely appeal.

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 did not have a reasonable opportunity to file a timely appeal because he did not receive the decision until December 21. After the claimant received the November 18 decision, he immediately filed his appeal. Based on the facts in this case, the claimant established a legal excuse for filing a late 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 §§ 96.5-1, 2-a. Since the claimant returned to work on February 11, 2009, the evidence does not establish that he intended to quit. Instead, the employer discharged him. 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant's failure to report to work for a week without notifying the employer amounts to an intentional and substantial disregard of the employer's interest. The claimant's failure to call or report to work February 4 through 10, 2009, constitutes work-connected misconduct. Therefore as of February 8, 2009, the claimant is not qualified to receive benefits.

Since the claimant filed for and received benefits since September 27, 2009, an issue of overpayment will be remanded to the Claims Section to address.

DECISION:

The representative's November 18, 2009 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 8, 2009. 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. An issue of overpayment for benefits the claimant has received since September 27, 2009, is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css