

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE C MINCHOCA**  
Claimant

**APPEAL NO. 13A-UI-11528-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 05/05/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 27, 2013, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Kris Kolbe participated in the hearing on behalf of the employer.

**ISSUES:**

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

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant's last assignment was working for RR Donnelly from May 28, 2012, to February 19, 2013.

After work on February 19, 2013, the claimant found out that his cousin had died in Mexico. He called one of the staffing consultants and informed her that he wanted to take some time off to go to Mexico due to the death in his family. The staffing consultant approved the time off and told the claimant that he should contact the employer when he returned.

In March 2013, the claimant returned to Iowa and contacted the employer about coming back to work. He was told that he would not be placed back on the assignment with RR Donnelly because of his attendance issues. The claimant had not been disciplined regarding his attendance.

An unemployment insurance decision was mailed to the claimant's last known address of record on September 27, 2013. The decision disqualified the claimant and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 7, 2013.

The claimant never received the decision and was unaware of the disqualification until he received an overpayment decision on October 11, 2013. He immediately filed the appeal by fax on October 11, 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. The claimant's appeal is deemed timely because he never received the disqualification decision and immediately appealed it when he learned of the disqualification. (See 871 IAC 24.35(2) which excuses a delay in appealing if due to Agency error or delay or other action of the United States Postal Service).

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

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 claimant's testimony that he was approved to go to Mexico due to the death in his family. The employer's witness testified that the claimant told the staffing consultant he was quitting due to the family emergency, but this was secondhand information and the staffing consultant who spoke to the claimant was not at the hearing. The separation must be treated as a discharge.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 no misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The evidence fails to show any willful and substantial misconduct by the claimant. He had approval to take the trip to Mexico. The employer cited attendance issues but had not proof on this issue.

**DECISION:**

The unemployment insurance decision dated September 27, 2013, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs