

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY J KERNAN
Claimant

APPEAL NO. 09A-UI-08111-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 01/25/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated May 15, 2009, reference 01 that she voluntarily quit without good cause on March 31, 2009. A hearing was held on June 22, 2009. The claimant participated. Marlene Sartin, Employers Edge Representative, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the appeal is timely.

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked a full-time laborer from November 5, 2007 to about March 26, 2009. The claimant was terminated by the employer for attendance on March 31, 2009. Although the claimant had received a warning about attendance, she had not accumulated enough points to warrant a discharge. The employer protested the claimant's separation as a voluntary quit for personal reasons.

The decision deadline date for submitting a timely appeal is May 25th. The claimant missed the deadline date, because she did not receive the decision. The claimant learned about the decision on June 2nd when she called her local workforce center to inquire about her unemployment. The claimant immediately prepared an appeal letter that was mailed and postmarked on the same day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, 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 by any means other than the United States postal service or its successor, on the date it is received by the department.

The administrative law judge concludes that the claimant filed a timely appeal. Since the claimant did not receive the decision that is most probably due to a US Postal service error, she did not have an opportunity to file an appeal within the ten day deadline date. When the claimant learned about the decision (actual notice of it) on June 2nd, she mailed and postmarked an immediate appeal. Timeliness begins with actual notice.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the claimant was discharged for no act of misconduct on March 31, 2009.

The employer protested the claimant's claim as a voluntary quit, yet it mailed her a termination letter stating it was for attendance. The employer representative did not have evidence that the

attendance issue was for job related misconduct though claimant admitted she had been warned. There was no issue regarding claimant's ability and availability for work.

DECISION:

The decision of the representative dated May 15, 2009, reference 01, is reversed. The claimant did not voluntarily quit, but was discharged for no act of misconduct in connection with employment on March 31, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs