IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID R LILE
Claimant

IA DEPT OF HUMAN SVCS/WOODWARD
Employer

APPEAL NO. 09A-UI-11183-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 11/16/08
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Iowa Department of Human Services/Woodward (employer) appealed a representative's December 15, 2008 decision (reference 01) that concluded David R. Lile (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2009. The claimant participated in the hearing. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from two other witnesses, John Andorf and Misty Clark. During the hearing, Exhibit A-1 was entered into evidence. 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:

Was the employer's appeal timely?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The representative's decision was mailed to the employer's representative's address of record on December 15, 2008. The employer's representative received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 25, 2008. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Friday, December 26, 2008. The appeal was not received by the Appeals Section until a challenge was made on July 13, 2009 to a quarterly assessment of charges for benefits paid during the second quarter 2009.

The employer's representative produced a copy of an appeal letter generated on December 26, 2008. The representative's records show that it was faxed to the Appeals Section fax machine that morning; while no successful fax transmission report was generated, the representative's

fax system only generates reports when a transmission is unsuccessful, and there was no record of an unsuccessful fax transmission for the letter.

The claimant started working for the employer on March 31, 2006. He worked full-time as a residential treatment worker. His last day of work was October 17, 2008. The employer suspended him as of that date and discharged him on November 3, 2008. The reason asserted for the discharge was failing to treat a male client with proper dignity and respect during an incident on October 6 and failing to cooperate with an investigation.

The claimant normally was assigned to assist the particular male client; on October 6, he had planned to take the client on a field trip. Prior to the claimant's arrival for his shift at approximately 1:30 p.m., the client had hit himself, a behavior for which he had specific consequences, including being precluded to go on field trips. When the claimant arrived for work, he learned the client was on restriction; he went to the place in the workshop area where the client was sitting and began to explain to him he would not be able to go on the planned field trip. The client became angry and started to get up with his hand in a fist; the claimant pushed himself away from the client. At approximately that time, a supervisor came into the area and pulled the claimant aside to advise him that due to a prior statement made by the client, the claimant was not supposed to work with him that day anyway.

The employer asserted that the claimant had been verbally abusive toward the client in the workshop, yelling in his face and saying he could go on "no more f - - -ing field trips." The claimant denied these allegations. The employer further asserted that later that evening that the claimant had called the cottage in which the resident lived and had asked to speak to him, and had tried to influence the client's statement regarding what had happened with the claimant. The claimant denied calling and asking to speak to the client; he asserted he had called and spoken with another worker at the cottage, but when that worker put down the phone, the client picked up the phone, but the claimant told him he could not talk to him. The employer concluded that the claimant had lied during the investigation on this point, but the employer has not presented any evidence to that effect sufficient to overcome the claimant's first-hand testimony to the contrary.

Because of the employer's conclusion that the claimant did not treat the client with dignity and respect and because of the conclusion that the claimant had lied during the investigation, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the employer) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa 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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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 record shows that the appellant has provided a prima facia case that it did file a timely appeal.

The administrative law judge concludes that the failure to receive the appeal the within the time prescribed by the Iowa Employment Security Law was likely due to Agency error or misinformation or delay pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the claimant's treatment of the client in the workshop on October 6 and his supposed lying during the investigation regarding subsequent contact with the client. Assessing the credibility of the witnesses and reliability of

the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant either failed to treat the client with dignity and respect or that he lied during the investigation regarding subsequent contact with the client. Notably, while the employer provided first-hand testimony through Ms. Clark to the contrary of the claimant's testimony as to the incident in the workshop, Ms. Clark's testimony directly conflicted with other statements presented and relied upon by the employer as to the claimant's point that it was the client who became angry and started to arise in a potentially hostile manner. Further, Ms. Clark's prior statements written shortly after the event omitted key information she subsequently included in her testimony, such as the use of vulgar language. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 15, 2008 decision (reference 01) is affirmed. The appeal is treated as timely. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw