

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER L CLARK
Claimant

APPEAL NO. 15A-UI-00077-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 11/30/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Amber Clark (claimant) appealed a representative's December 22, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with The University of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2015. The claimant participated personally. The employer chose not to participate in the hearing. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 11, 2012, as a full-time staff nurse. The claimant reviewed the employer's online handbook. The employer issued the claimant two written warnings with regard to covering shifts and mistaken communication.

On November 25, 2014, a co-worker drew blood from an individual, labeled the tube, put the tube in a plastic biohazard bag, put a paper on the tube that indicates the tube had been scanned, and placed it on the counter for mailing to the blood bank. The claimant mailed the tube to the blood bank. As soon as the claimant realized the co-worker did not actually scan the tube of blood, she notified the blood bank and told them to waste the tube.

On November 28, 2014, the claimant was supposed to administer a Fentanyl infusion. When administering narcotics, the claimant normally administered an IV infusion. The claimant asked a second nurse to come and watch to make certain she was performing the job correctly. The handbook indicates this was a double verification medication. The medication had a big range

and the claimant suggested administering the lowest dose, ten. The other nurse noticed the recommended dosage as twenty-five. The later dose was administered.

On December 4, 2014, the employer terminated the claimant for sending a tube of blood to the blood bank without scanning it on November 25, 2014, and for trying to prescribe a medication on November 28, 2014.

A disqualification decision was mailed to claimant's last-known address of record on December 22, 2014. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 1, 2015. January 1, 2015, was a holiday and so the claimant could file a timely appeal by January 2, 2015. The claimant placed her appeal in an United States postal blue drop box outside a United States Postal Office on January 1, 2015. The appeal was not postmarked until January 3, 2015, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant mailed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was discharged for misconduct. The administrative law judge concludes she was not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The December 22, 2014, reference 01, decision is reversed. The claimant's appeal is timely. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs