

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MEGAN K JEWELL**  
Claimant

**APPEAL NO. 11A-UI-10486-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES  
INC**  
Employer

**OC: 02/06/11**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated July 27, 2011, reference 03, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on August 31, 2011. The claimant participated personally. The employer participated by Mr. David Williams, Assistant Manager/Hearing Representative TALX Corporation and witness Mr. Armond Dawson, Center Manager.

**ISSUE:**

The issue in this matter is whether the claimant filed a timely appeal and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: A disqualification decision was mailed to the claimant's last-known address of record on July 27, 2011. The claimant denies receiving the decision. When the claimant telephoned the local Claims Center, she was informed that the decision had been dated July 29, 2011 and that she had until August 9, 2011 to file an appeal. The claimant filed an appeal on August 9, 2011.

Ms. Jewell was employed by Thomas L. Cardella & Associates from April 11, 2011 until June 23, 2011 when she was discharged for exceeding the permissible number of attendance infractions allowed under company policy. It is the claimant's position that she should not have been discharged or disqualified as she was working under a special employment agreement that did not require her to adhere to the company's attendance policies.

Under established company policies employees are subject to discharge if they accumulate four attendance infraction points within a rolling 90-day period. All employees are informed of the employer's expectations and informed of the company's attendance policies.

Ms. Jewell was warned about her unsatisfactory attendance on April 26, 30 and June 11, 2011. Although the claimant believed that she should not be receiving attendance infraction points for days that she was absent, she did not bring her concerns up the chain of command to the company's center manager or to the company's personnel department.

The claimant's final infraction that resulted in her discharge from employment took place on June 21, 2011 when the claimant notified the employer that she would not be reporting to work that day because of "childcare reasons."

Ms. Jewell had relied upon her father to provide childcare for one of her children. When the claimant's father was hospitalized on June 20, 2011, Ms. Jewell relied upon backup childcare and reported for scheduled work as expected. The claimant did not report for work the next day, June 21, 2011, because she had insufficient childcare arrangements that day although the claimant's father continued to be hospitalized. Ms. Jewell's stated reason for being absent on June 21, 2011 was due to lack of childcare. Because the claimant's most recent absence had caused her to exceed the permissible number of attendance infractions allowed under established company policy, the claimant was discharged from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 Supreme Court has declared there is a mandatory duty to file appeals from representative's decisions within the time allotted by statute. Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Although the reasons stated by the claimant for her late filing are questionable, in the absence of any evidence to the contrary the administrative law judge concludes that the claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to an Agency error or action. Therefore good cause for late filing has been established.

The next question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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.

871 IAC 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.

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that unexcused absenteeism is a form of job misconduct. The Court held that the absence must be both excessive and unexcused. The court held that concept also includes tardiness, leaving early, etcetera. The Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that matters of "personal responsibility", such as transportation problems, oversleeping or failure to make adequate childcare responsibilities are considered unexcused. The evidence in the record establishes that Ms. Jewell stated that the reason for her most recent attendance infraction was due to lack of childcare and not due to medical necessity that related to her father's hospitalization.

Although the administrative law judge is aware that Ms. Jewell believes that she was under a special agreement of hire that did not require her to adhere to the company's attendance rules, the administrative law judge finds that the claimant's testimony strains credibility. The evidence in the record establishes that Ms. Jewell received repeated warnings from the employer about her attendance but that the claimant did not go up the chain of command to have the warnings removed or to establish with management that she was in fact under a special employment relationship. The administrative law judge concludes that the claimant was required to adhere to the company's reasonable attendance policies.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

#### **DECISION:**

The representative's decision dated July 20, 2011, reference 03, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css