

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A CRANE
Claimant

APPEAL NO: 14A-UI-09193-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 07/14/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 1, 2014 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated at the September 2 hearing. The employer informed the Appeals Bureau just prior to the hearing and at the hearing that the employer was not going to participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that based on the July 15, 2013, employment separation, the claimant is qualified to receive benefits.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that do not qualify him or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2012. He worked full time. During his employment, the claimant received two counseling statements. He received the most recent in May 2013. The claimant understood he received the most counseling for talking to another employee and telling him how to do a job. The counseling statement informed the claimant that if there were further issues, he could be terminated.

On July 15, 2013, the claimant was upset and frustrated after discovering glycol leaking from a pump he had serviced just a day or two earlier. The claimant concluded the pump had been tampered with to make him look bad. He attempted to tell L.N. about issues at work. Instead of listening to the claimant, L.N. told the claimant he was done. When the claimant continue to talk about issues he had notice, L.N. told him that if he did not leave, she would call security. Before L.N. told the claimant to leave, he told her that what was happening to him was so frustrating he

had thought about resigning. The claimant did not resign and if he had not been told to leave on July 15, he would have continued his employment.

The claimant established a claim for benefits during the week of July 14, 2013. The Benefits Bureau did not conduct a fact-finding interview on this separation until July 2014 or after the claimant had established a new benefit year. The Benefits Bureau mailed an August 1, 2014 determination to the claimant and employer. This determination disqualified the claimant because he had voluntarily quit his employment on July 15, 2014. (The claimant's employment actually ended in 2013.)

The claimant received the determination on August 6 or 7. He went to his local Workforce office on August 11 and appealed the August 1 determination. The claimant's local Workforce office faxed his appeal to the Appeals Bureau on August 12, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed at the claimant's local Workforce office on August 11. The claimant filed a timely appeal. Even though the Workforce office may have faxed his appeal on August 12, the claimant established that he filed his appeal on August 11 at his local Workforce office. The Appeals Bureau has legal jurisdiction to address the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant voluntarily quit his employment. The claimant may have thought about resigning, but he did not. Instead on July 15, 2013, when there was leak in a pump the claimant had recently maintained, he was told to leave and if he did not security would be called. The employer discharged the claimant on July 15, 2013.

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 (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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for ending the claimant's employment, but the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of July 14, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's August 1, 2014 determination (reference 03) is reversed. The claimant filed a timely appeal. The Appeals Bureau has jurisdiction to address the merits of the claimant's appeal. The claimant did not voluntarily quit. Instead the employer discharged him on July 15, 2013. The evidence does not establish that the claimant committed work-connected misconduct. As of July 14, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css