IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JENNIFER R STOWELL
1248 KNAP PL
BOONE IA 50036-7177

STOTT & ASSOCIATES PC
1421 S BELL AVE #101
AMES IA 50010-7710

Appeal Number: 06A-UI-04356-JTT
OC: 03/12/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Jennifer Stowell filed a late appeal from the April 6, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 8, 2006. Claimant participated. Firm Principal Mike Stott represented the employer. Department Exhibits D-1 through D-4 were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Stowell did not receive her copy of the April 6, 2006, reference 01, decision denying benefits until after the deadline for appeal had passed. Ms. Stowell learned about the decision denying benefits when she telephoned the Ames Workforce Development Center on April 17. At that

time, a representative erroneously advised Ms. Stowell that the deadline for appeal had passed. The deadline set forth in the decision was April 16, a Sunday, and was extended by operation of law to Monday, April 17. Ms. Stowell faxed her appeal to the Appeals Section on Tuesday, April 18, 2006.

Jennifer Stowell was employed by Stott & Associates as a full-time office manager for approximately six years until March 15, 2006, when Firm Principal Mike Stott discharged her. Included in Ms. Stowell's duties as office manager were duties associated with processing payroll information and forwarding contributions to the employees' individual retirement accounts. Ms. Stowell understood that such information was privileged and confidential.

The incident that prompted the discharge came to the employer's attention on March 14, and concerned two e-mail messages Ms. Stowell had sent to former employees on Monday, March 13. Ms. Stowell sent the e-mail messages from the employer's computer, while she was on the clock. The first e-mail was to former employee Fernando Schrupp. In this e-mail, Ms. Stowell included privileged information regarding the employer's financial status, including that payroll had been "about five days late a couple months ago" and "I presume things will be going under soon unless people keep quitting and then he [Mr. Stott] may still make it." Ms. Stowell included critical remarks regarding Mr. Stott in the e-mail. These included that, "Some people are slow to get the message," referring to Mr. Stott's discovery that an employee was attempting to recruit business away from the employer. Ms. Stowell's comments also included the following: "I put those who will have to remain here trying to do the work of three or four to make up for his [Mr. Stott's] greed and costly personal purchases that put us in this mess." The second e-mail was to former employee Cindy King. Ms. Stowell opened this e-mail as follows: "Things have really gotten into a mess here…lots going on and each month it is really a question as if there will be checks again??"

Approximately one week earlier, Mr. Stott became aware of other e-mail messages Ms. Stowell had sent to individuals outside the firm. Ms. Stowell had also divulged privileged information regarding the firm's finances in these e-mails. On January 31, Ms. Stowell sent an e-mail to a friend who worked in the loan department of Boone Community Bank. In this e-mail, Ms. Stowell said, "Today is the day…hope something comes in the mail and we can make payroll…so far we have not made it!" Also on January 31, Ms. Stowell sent a message to her investment advisor. Ms. Stowell discussed concerns regarding the employer being late in submitting her individual retirement account contribution and the impact on her investments. However, Ms. Stowell went beyond that, as follows: "Also what about the fact since payroll was not met…maybe those checks will never get sent? Then what? If the tower continues to crumble…this may happen. Isn't there something about using employees money without their permission…etc?" Ms. Stowell asked her investment advisor to reply to her home e-mail. On February 8, Ms. Stott had sent an e-mail message to a friend at Iowa State University. In this message, Ms. Stowell wrote the following:

> [N]ot too much is new other than our IRA (employees portion) has been paid as of Mon. Other than that just trying to keep up with the Acct Payable and no Acct Receivables…it piles up and is a lot more to keep up with when you get 4 & 5 invoices and then statements from each vendor and then trying to figure out all the late fees and %'s charged and what was just paid and what is still sitting.

Ms. Stowell later added that, "since payroll wasn't met once then the next time may not be such a shock!"

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Ms. Stowell's late appeal should be deemed timely. It does.

Iowa Code section 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 ten-day deadline for appeal begins to run on the date the decision is mailed. 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). Any decision mailed by the Unemployment Insurance Division is considered as having been given to the addressee to whom it is directed on the date of the document, unless otherwise indicated by the facts. 871 IAC 24.35(3).

The Iowa Supreme 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 is 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). An appeal submitted by any means other than mail is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. 871 IAC 24.35(1)(b). The submission of an appeal beyond the statutory or regulatory deadline will be considered timely if the evidence establishes that the delay in submission was due to Agency error or misinformation or to delay or other action of the United States Postal Service. 871 IAC 24.35(2). The evidence in the record establishes that Ms. Stowell was denied a reasonable opportunity to submit her appeal within the statutory 10-day deadline, due to either Agency error or delay or other action of the United States Postal Service.

The remaining question regarding the issue of timeliness of the appeal is whether Ms. Stowell unreasonably delayed submission of her appeal. She did not. No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c). The evidence indicates that Ms. Stowell submitted her appeal the day after learning of the adverse decision.

The claimant's appeal is deemed timely, pursuant to Iowa Code section 96.6(2), and the administrative law judge, therefore, has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

The next question is whether the evidence in the record establishes that Ms. Stowell was discharged for misconduct in connection with the employment. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that on March 13, 2006, Ms. Stowell carelessly divulged the employer's privileged financial information to two individuals outside the employer's firm. The evidence further establishes that Ms. Stowell had carelessly divulged the employer's privileged financial information to two more individuals outside the employer's firm on January 31 and carelessly divulged the employer's privileged financial information to yet another individual outside the firm on February 8. The individuals with whom Ms. Stowell shared the employer's confidential financial information included a bank loan department employee, an investment advisor, an employee at the public university located in the same community as the employer's firm, and former employees of the firm. The effect was to broadcast negative information about the employer. A reasonable person in Ms. Stowell's position would have understood the confidential and privileged nature of the employer's financial information and would not have shared such information with others within the firm or outside the firm. Ms. Stowell understood the information was privileged and shared it nonetheless. Ms. Stowell's carelessness in divulging the employer's privileged financial information was sufficiently recurrent to amount to a willful or wanton disregard of the employer's interests and to amount to an intentional violation of standards of conduct that the employer reasonably expected of an employee in Ms. Stowell's position.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Stowell was discharged for misconduct. Accordingly, Ms. Stowell is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Stowell.

DECISION:

The claimant's appeal is deemed timely. The Agency representative's decision dated April 6, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

jt/kkf