

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY L IRVIN
Claimant

APPEAL NO. 08A-UCFE-00001-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 12/02/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 2, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 30, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative and witness, Randy Kruger. Angie Pettinger participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a mail handler from March 3, 1984, to October 16, 2007. He was placed on paid administrative leave through December 27, 2007.

The claimant was discharged on December 27, 2007, for two reasons. The first reason was because he had been arrested on September 26, 2007, for second-degree theft on a charge arising from transactions involving checks issued by the claimant on a bank account with insufficient funds. The second reason was because he did not properly account for his time on September 17, 2007.

The charges against the claimant were dismissed on January 8, 2008, and the claimant has not been convicted of any criminal offenses regarding the matters that led to his arrest.

On September 17, 2007, the claimant was called away from work to go to his bank for an interview with police detectives. He properly notified his supervisor, who allowed him to leave. He failed to punch out when he left on the time system but did not do so deliberately to get paid for time he had not worked. When he returned to work about a half hour later, he punched back in and notified the supervisor that he had returned. Missing punch outs were common in the area in which the claimant worked and were handled by the supervisor presenting a missing time form to the employee to account for the missing time. For some reason, the supervisor did

not submit the missing time report to the claimant to complete. The claimant did not deliberately misreport his time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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 substantial and 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).

No willful and substantial misconduct has been proven in this case. An arrest does not constitute proof that the claimant committed any crime or improper conduct. The employer has not supplied any evidence that the claimant committed any illegal, immoral, or unprofessional

behavior. The missed time punch amounts to, at most, negligent conduct not rising to the level of willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated January 2, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw