

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDY S SONNE
Claimant

APPEAL NO. 17A-UI-04993-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

USPS
Employer

OC: 04/09/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sandy Sonne (claimant) appealed a representative's May 3, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after r separation from employment with United States Postal Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 30, 2017. The claimant participated personally. Sally Billings observed the hearing. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is 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 May 13, 2006, as a full-time rural mail carrier. The employer's handbook has a zero tolerance policy for harassment. Since the claimant was hired the postmaster has created a hostile work environment for the claimant. The postmaster allowed another carrier to harass and bully the claimant and other workers. The postmaster announced she would continue working at the job to make subordinates miserable. She threatened to terminate the claimant for something the claimant did not do.

On March 22, 2017, the claimant had a new supervisor and was telling her about the behavior of the postmaster. After years of harassment the claimant vented by saying, "Do you see why I want to throat punch her?". The employer investigated and suspended the claimant on March 31, 2017. She has not been returned to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not suspended for misconduct.

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 claimant's single incident of verbalizing her frustration, after years of bullying, does not rise to the level of misconduct. Her words were not appropriate but they were not misconduct in the employer's environment of allowing such conduct. The employer did not participate in the hearing and, therefore, did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 3, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs