

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONI L DWYER
Claimant

APPEAL NO. 08A-UCFE-00027-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 08/03/08 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Toni L. Dwyer (claimant) appealed a representative's September 17, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from the United States Postal Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a substitute carrier in April 1991. She became a more regular substitute rural carrier in 1992, and in October 2004 became a regular full-time rural carrier. Her last day of work was January 7, 2008. For the last couple years prior to her separation, she worked Tuesday through Saturday.

The claimant had been suffering from carpal tunnel syndrome in both hands for at least a year; on or about November 17, the claimant informed the employer that her doctor was planning on scheduling her for surgery after the first of the year and that she would need to be off work for at least three or four weeks after surgery. On or about December 17, the claimant turned in paperwork to her supervisor to inform the employer that her doctor was ordering her off work as of January 8 in preparation for an initial surgery January 17 and a second surgery February 28.

There was not a substitute available to cover the claimant's route on Monday, January 7, so even though Monday was usually her day off, she had been asked and she had agreed to come in that day and cover the route. When she arrived for work but before going out on her route, a supervisor other than her regular direct supervisor told her that she could not have surgery and

be off work until the employer found a substitute to cover the route. He further informed her that she was going to have to change her day off from Monday to another day of the week. The claimant became very upset and was crying, as she felt the employer was seeking to avoid its responsibility for her medical condition. She insisted to the supervisor that she needed to have the surgery as scheduled by her doctor, and that she would not agree to switch her day off without discussing the matter with her union steward.

The supervisor continued to be insistent and the claimant became more upset, asking to simply be allowed to go home for the day to settle down. Ultimately, the postmaster summoned the claimant into her office and excused the supervisor. The claimant did calm down and eventually went and completed her route. She then proceeded to be absent pursuant to her doctor's instruction and underwent her initial surgery.

While she was on her medical leave, she received a letter directing her to report for an investigatory meeting on January 29. Although she was still on medical leave, she did attend the meeting. The employer then gave her a letter indicating it was initiating separation due to her "inappropriate behavior" on January 7. The employer asserted that the claimant had told the supervisor to "shut up" at least once during their discussion on January 7; the claimant denied ever telling him to "shut up."

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her alleged inappropriate behavior on January 7, 2008. Assessing the credibility of the claimant and reliability of the

evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant engaged in inappropriate behavior on January 7. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 17, 2008 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw