

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN D KENNEDY
Claimant

APPEAL NO: 11A-UI-09756-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 05/29/11

Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed a representative's June 24, 2011 decision (reference 01) that concluded Kevin D. Kennedy (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 17, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Steve Jackson appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 on September 13, 2010. He worked part time (20 – 25 hours per week) as loader on an afternoon shift at the employer's Davenport, Iowa facility. His last day of work was May 31, 2011. The employer discharged him on that date. The stated reason for the discharge was refusing to work as directed.

The claimant had prior disciplinary issues, and earlier in May had initially been discharged, but had then been brought back for a second chance. On May 31 the claimant's supervisor approached him to advise him that his break was being delayed because of the workload and the need to get a trailer out on time. The ten-minute break would have been delayed between 30 and 50 minutes. The claimant refused to delay his break. Other managers, including Mr. Jackson, the hub supervisor, became involved, but the claimant continued to refuse to continue to work and delay his break. A union representative further advised the claimant that he should delay his break and continue to work, but the claimant continued to decline. He gave no explanation for his refusal other than he was getting tired. The claimant was further advised that if he continued to refuse, his job was in jeopardy, but still refused. As a result, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective May 29, 2011. The claimant has received no unemployment insurance benefits since the separation from employment.

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); Iowa Code § 96.5-2-a.

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 which 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 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. 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).

Refusal to work as directed or to continue working beyond the normal work period can be misconduct, depending on the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The employer's request to delay the break to catch up on the work load and to get out the trailer was reasonable, and the claimant had no reasonable excuse for his noncompliance. The claimant's refusal to work as directed, even after being informed that his job was in jeopardy, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 24, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 31, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs