

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE D MULLICA**  
Claimant

**APPEAL NO: 14A-UI-13044-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 11/30/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Michelle D. Mullica (claimant) appealed a representative's December 17, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from United Parcel Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 15, 2015. The claimant participated in the hearing and was represented by Bryan Witherwax, attorney at law. Mike Arndt appeared on the employer's behalf. During the hearing, Employer's Exhibits Two, Three, Five, and Six were entered into evidence. Based on the evidence, the arguments of the parties, 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?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on September 18, 1989. She worked part time (20 – 25 hours per week) as a package handler at the employer's Des Moines, Iowa hub. Her last day of work was November 3, 2014. The employer discharged her on that date. The stated reason for the discharge was surreptitiously bringing in an electrical device and making video recordings in the workplace.

The claimant had a baseball-type cap with a concealed video recorder. On several occasions, at least in January 2014, she brought the cap into the workplace and recorded interactions with a coworker. On October 30, 2014 the employer became aware of this because the claimant

posted the videos onto YouTube and sent an email to the employer's labor relations manager on October 30 which contained a link to the videos. Her reason for sending the link to the videos at that time was to try to show the labor relations manager that this coworker was responsible for difficulties between the claimant and the coworker.

The employer has policies against bringing electronics into the workplace, and other policies against recording within the premises. The claimant had been warned in the past about some of these policies. Because of the discovery that the claimant had brought in concealed electronic equipment and made the recordings in the workplace, the employer discharged the claimant.

#### **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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's bringing concealed electronic equipment into the workplace and making of the video recordings in the workplace 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 December 17, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 3, 2014. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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