

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J JUSTMAN
Claimant

APPEAL NO: 11A-UI-08323-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 01/06/08
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 20, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in early April 2010. He worked as a part-time loader.

In mid-March 2011, the claimant was ill a couple of days. He went to a doctor for this illness and provided the employer with a doctor's statement verifying he had been ill. Just prior to early April the claimant again called in sick because he had an infected tooth. Again, the claimant gave the employer a doctor's statement verifying he had been ill and unable to work.

In early April 2011, the hub manager questioned the claimant's commitment to the employer because he had recently called in sick a number of times. The claimant and hub manager engaged in a verbal confrontation about the claimant's attendance. The hub manager sent the claimant home and told him he was discharged. The claimant understood he was discharged for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reason for sending the claimant home in early April 2011 and then discharging him. Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. As of April 3, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 20, 2011 determination (reference 01) is reversed. The employer may have discharged the claimant for business reasons, but did not establish that the claimant committed work-connected misconduct. As of April 3, 2011, the claimant is qualified to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs