IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID G MCCOY
Claimant

UNITED PARCEL SERVICE
Employer

APPEAL NO. 09A-UI-15858-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09-13-09
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 7, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 24, 2009. The claimant did participate and was represented by Michael Brown, Attorney at Law. The employer did participate through (observer) Laura McFadden, Human Resources Representative and (representative) Gary Dillehay, Business Manager and Jim Vondarhaar, Supervisor. Claimant's Exhibits One through Seven were entered and received into the record.

ISSUE:

Was the claimant suspended for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a package delivery driver full time beginning in February 1985 through date of hearing as claimant remains employed.

On the morning of September 16 the claimant arrived at work and was told by his direct supervisor Jim Vondarhaar that he was going to ride with him on his route that day. Mr. Vondarhaar said it was because he had not been to the Fairfield area recently which the claimant knew to be untrue. The claimant believed that Mr. Vondarhaar was going to ride with him as a way to harass him. The claimant believed that his supervisors were trying to find a reason to fire him. The claimant was singled out to have a supervisor ride with him much more often than other employees. After telling the claimant he was going to ride with him, Mr. Vondarhaar walked away from the claimant to deal with some other employee questions. Before he could return to talk to the claimant again and begin the route, Mr. Vondarhaar was told by Kelly O'Brien that the claimant had called the employer to tell them he felt ill and unable to work and was going to his doctor. The claimant reported his illness to the employer before he left the workplace parking lot. Due to his mental agitation the claimant was unable to speak to Mr. Vondarhaar. The claimant did report to his doctor with complaints of an elevated heart rate immediately after leaving the workplace. He was seen by Michael J. Greiner, M.D. who ran an

EKG and diagnosed the claimant as suffering from anxiety. Dr. Greiner removed the claimant from work for the day and gave him a note to give to his employer the following day.

When the claimant returned to work on September 17 he was told that he was no longer considered an employee despite the fact that he produced a note from Dr. Greiner removing him from work for September 16. The claimant filed another grievance over his discharge which was subsequently resolved between the union and the employer as the claimant having been suspended from September 17 through October 26, when he was allowed to return to work.

The claimant had no prior discipline for any attendance issues. The claimant had on a prior occasion left work and sought medical treatment for an elevated heart rate and/or anxiety in May 2009 and that was not a problem for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

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.

871 IAC 24.32(9) provides:

> (9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the

separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant was physically and emotionally unable to work on September 16 after being told by his employer that he was going to ride along with him. The claimant made sure that the employer knew he was leaving and then immediately sought medical attention. His treating physician removed him from work. Under such circumstances the administrative law judge cannot conclude that the claimant was abandoning his job or that his leaving was work connected misconduct. The claimant had left on other occasions under similar circumstances and received no discipline or warning.

Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation or in this case, suspension, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 7, 2009, reference 01, decision is affirmed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs