

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JOSEPH J BARTHOLE  
2931 S OLIVE ST  
SIOUX CITY IA 51106

UNITED PARCEL SERVICE  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10847-CT  
OC: 08/29/04 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

United Parcel Service (UPS) filed an appeal from a representative's decision dated September 29, 2004, reference 01, which held that no disqualification would be imposed regarding Joseph Barthole's separation from employment. After due notice was issued, a hearing was held by telephone on October 28, 2004. Mr. Barthole participated personally. The employer participated by Tim Cole, Business Manager. Exhibits One through Eight, exclusive of Four, were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Barthole was employed by UPS from May 13, 1986 until September 9, 2004. He was initially employed to work as a driver during the summer but became a regular, full-time delivery driver as of September 17, 1986. Mr. Barthole was allowed to have one hour for a lunch break daily. The time could be taken in a block or in increments. Mr. Barthole was discharged for exceeding the allowable lunch periods and providing false information on his time records.

Based on an anonymous complaint that Mr. Barthole's company car was seen parked in a residential area for an extended period of time, the employer decided to set up surveillance. On the morning of August 25, Mr. Barthole spent 20 minutes at his home in the morning after having already clocked in for the day. He was at his home for one hour the evening of August 25 before he clocked out for the day. Mr. Barthole did not have any deliveries in the area on August 25. On August 26, he was at his home for 38 minutes in the morning and an hour and 38 minutes in the evening. On August 27, he was at his home for 41 minutes in the morning after clocking in for work. On the evening of August 27, he spent one hour and 20 minutes between a friend's house and his own home. Mr. Barthole indicated on his time records that he had only taken one hour for break on August 25, 26, and 27. As a result of providing false time on his time records, Mr. Barthole was discharged from the employment.

Mr. Barthole has received a total of \$3,159.00 in job insurance benefits since filing his claim effective August 29, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Barthole was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Barthole was discharged for providing false information on his time records. He exceeded his allowable lunch break on at least three separate occasions the employer was able to document. He may very well have had permission to go to his home in the morning and again in the evenings. However, this permission would not release him from his responsibility to abide by the employer's policy regarding breaks. Nor would it relieve him of his responsibility to accurately report his time.

The employer had the right to expect that Mr. Barthole would spend his work time performing tasks related to his job and for which he was receiving pay. He was spending time at home performing personal chores while being paid by UPS. He was also spending time with his girlfriend while being paid by UPS. He contended that he simply lost track of time on the occasions when he went home during the workday. However, it was his responsibility to monitor his time to make sure he did not exceed the allowable time. Mr. Barthole knew or should have known without benefit of prior warnings that his conduct was contrary to the employer's expectations. His conduct amounted to theft as it had the potential for him to receive pay to which he was not entitled. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Barthole has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 29, 2004, reference 01, is hereby reversed. Mr. Barthole was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Barthole has been overpaid \$3,159.00 in job insurance benefits.

cfc/kjf