

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEVON D HAWBAKER
Claimant

APPEAL NO: 14A-UCFE-00030-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 07/27/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(9) – Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 22, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa before Administrative Law Judge Julie Elder on September 15, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not appear for the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the employer suspended the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time rural mail carrier November 22, 2008. He was suspended from July 17, 2014 through August 30, 2014 during an investigatory period to determine whether he delayed the delivery of first class mail. The claimant had been on annual leave seven of the previous 12 business days and substitute carriers delivered his route on those days. The claimant asked the postmaster why he was being investigated and was told one of the substitute carriers who worked the week before told the claimant's supervisor that approximately ten mailboxes were full of mail. The postmaster showed the claimant the mail in question and the claimant asked if any of the mail was wrongly delivered and was told it was not but that it should have been returned to sender after ten days. The postal contract does not require that carriers mark mail as "return to sender" after ten days.

The claimant was originally told he would be on an investigatory suspension for two weeks while the employer completed its investigation. On August 1, 2014 the employer called the claimant in for a follow-up interview with the postmaster. The claimant was told the investigation was not complete but the employer was going to move forward with the claimant's termination.

The claimant had learned that on July 18, 2014, the day after he was suspended for an investigation, the postmaster met with the entire postal district and warned all carriers within that district that if they did not remove mail from all mailboxes that had been in the mailbox ten days or longer, disciplinary action would be taken. When the claimant met with the postmaster August 1, 2014 he asked the postmaster if that was true and was told it was. After making that announcement to the carriers a large amount of mail came back and was marked "return to sender" and none of the mail carriers were disciplined.

On August 29, 2014 the claimant's union steward contacted him and stated the employer was offering to allow him to return to his position but he would not receive any back pay and could not file a grievance regarding the situation. There was no finding of wrongdoing on the part of the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code section 96.5-2-a. In order for a suspension to be a disqualifying event, the evidence must establish misconduct. See 871 IAC 24.32(9). Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

When misconduct is alleged as the reason for a suspension resulting in a subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant confirms that his suspension was based on a complaint from a substitute carrier that he allowed mail to pile up in resident's mailboxes even though the claimant was on vacation seven of the previous twelve working days. Additionally, after suspending the claimant while the employer conducted an investigation, the employer held a meeting with the other carriers the following day and warned them that if they did not remove all mail from mailboxes that sat in mailboxes for longer than ten days would face disciplinary action, a courtesy not extended to the claimant prior to his suspension. The employer allowed the claimant to return to work August 29, 2014 without any finding of wrongdoing by the claimant.

Consequently, the administrative law judge concludes work-connected misconduct as defined by unemployment insurance law has not been established in this case. Therefore, benefits are allowed.

DECISION:

The unemployment insurance decision dated August 22, 2014, reference 01, is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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