

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON B MILLS

Claimant

APPEAL NO: 09A-UCFE-00022-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE

Employer

OC: 07/05/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Absenteeism

STATEMENT OF THE CASE:

U.S. Postal Service filed a timely appeal from a representative's decision dated August 25, 2009, reference 01, which the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 28, 2009. The claimant participated personally. The employer participated by Ms. Angie Pettinger, Labor Relations Specialist.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jason Mills was employed as a full-time mail handler for the U.S. Postal Service from November 13, 1993 until May 10, 2009 when he was discharged from employment for excessive absenteeism and failure to follow instructions regarding documentation.

Mr. Mills had worked only intermittently since October 31, 2008. The claimant had initially provided a doctor's statement indicating the claimant was unable to report for medical/psychological reasons. On December 30, 2008, the claimant was sent a notice of absence inquiry instructing the claimant to supply medical documentation. The claimant did not contact the Postal Service with additional documentation at that time. It appears the claimant continued to be on Family Medical Leave. On January 9, 2009, the claimant reported for duty and worked on January 12 and 13. The claimant was again instructed to provide medical documentation and given until January 16, 2009 to do so. The claimant indicated that he had a doctor's appointment scheduled for January 20, 2009 and would be unable to comply until after that appointment. Mr. Mills did not again report for work but continued to call in each day reporting that he was absent due to illness/psychological reasons. The claimant was sent a number of additional inquiries by the Postal Service but did not respond. On April 7, 2009, the claimant was sent a 30-day notice of removal for failure to maintain regular attendance and

failure to follow instructions. The notice of removal gave the claimant the opportunity to personally visit with Pat Zeroni, the supervisor of distribution operations, within five days and given an opportunity to supply medical documentation. During a 30-day period following a notice of intention to remove an employee, employees are eligible to work each day or in the alternative, at the discretion of the Postal Service, be placed on paid administrative leave pending a decision on their discharge from employment.

The claimant submitted a doctor's statement to the U. S. Postal Service initially on April 7, 2009 and supplemented it with an additional statement on April 8, 2009 from his physician indicating that he was medically unable to work between the dates of November 15, 2008 and April 8, 2009. At the time of hearing the employer was unable to submit this documentation as it would have maintained in a separate area as a confidential medical document.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Mills was discharged for misconduct in connection with the employment. It does not.

Iowa Code section 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(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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify the denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not be

serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of misconduct. The Court further held, however, that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

The evidence in this case establishes that although Mr. Mills' attendance certainly was at the least questionable from the employer's viewpoint, Mr. Mills called in each day to report his impending absence citing medical/psychological reasons. The evidence in the record establishes that the claimant initially supplied a medical statement to the employer indicating that he needed to be absent for medical/psychological reasons. The claimant testified under oath that he submitted a medical statement from his physician on April 8, 2009 that verified that the claimant was unable to report to work for medical/psychological reasons between November 15, 2008 and April 7, 2009. Unfortunately, the employer's witness was unable to verify whether this document had in fact been submitted. Under U.S. Postal rules, medical documentation is kept in a separate category as confidential information.

The evidence is disputed as to whether Mr. Mills received numerous phone calls and letters sent to him by the U.S. Postal Service.

Based upon the evidence in the record, the administrative law judge must conclude that the claimant's absences were due to illness and were properly report, thus, his discharge took place under nondisqualifying conditions.

DECISION:

The representative's decision dated August 25, 2009, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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