

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM J RUSSEFF
Claimant

APPEAL NO. 14A-UI-07859-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 06/15/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated July 9, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 21, 2014. Claimant participated. The employer participated by Mr. Joe Brown, Labor Relations Manager.

ISSUES:

The issues in this matter are whether the claimant filed a timely appeal and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

A disqualification decision was sent to William Russeff's last-known address of record on July 9, 2014. The claimant did not receive the decision but subsequently contacted Workforce Development to determine why he was not receiving unemployment insurance benefits. Based upon information derived by Agency representatives, Mr. Russeff filed his unemployment appeal on August 1, 2014. Because the delay was caused by action of the United States Postal Service or Agency error, the administrative law judge concludes that pursuant to 871 IAC 24.35(2) the claimant's appeal is considered timely.

Having considered all the evidence in the record, the administrative law judge finds: William Russeff began employment with United Parcel Service in April 1986. Mr. Russeff held the position of full-time package delivery driver and was paid by the hour. His immediate supervisor was Lynn Hurly. Mr. Russeff was discharged from his employment with United Parcel Service on May 23, 2014.

The claimant was discharged for failure to follow the company's required verification policy for delivery of packages to commercial locations. Company policy requires drivers to obtain the signature verification of the recipient of packages at business locations where packages are being delivered by the company. If the driver is unable to obtain a required verification by the

recipient at the time of delivery, drivers are authorized to leave a form at the location for the recipient to complete verifying that they have received the business package.

On May 22, 2014, Mr. Russeff delivered two packages to a business location in Mason City, Iowa, but did not obtain the signature verification for the delivery of one of the two packages. Although aware of his error when he returned to his truck, Mr. Russeff did not return to the business location to obtain a proper signature from the recipient or to leave a form for the recipient to complete. The claimant instead substituted his name in place of the name of the true recipient. Mr. Russeff elected to follow this procedure rather than taking the number of minutes required to return to the business location to obtain proper documentation from the recipient that the package had been received.

The claimant was aware of the proper procedure to follow in obtaining verification signatures from business locations that packages had been properly delivered but did not follow it. Mr. Russeff had previously been warned about the same issue. The claimant was most recently warned that he must follow the required procedure in obtaining signature verification from the recipients at business locations on March 6, 2014. The claimant was placed on notice at that time that additional violations of the rule would result in his termination from employment.

The claimant does not deny that he substituted his name for the name of the true recipient at the business location on July 22, 2014. It is the claimant's position that returning to the business to obtain the proper verification would have taken "seven minutes" and he believed that the company's emphasis on how quickly he completed his route each day had more importance than the rule about obtaining the correct verification from business locations that packages had been received.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

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

In the case at hand the evidence establishes that the claimant was aware of the company rule that required that packages being delivered to business locations be verified as received by the recipient at the location. The evidence also establishes that the claimant had been specifically warned that he must follow the policy or face discharge from employment. On or about May 22, 2014, the claimant failed to obtain the required verification after delivering a package to a business location in Mason City, Iowa, but the claimant substituted his name for the true name of the recipient to save the time and effort required to retrace his step in obtaining the proper verification. Mr. Russeff was aware that obtaining the verification of receipts to business locations was essential and that he had the option of leaving a form to be later completed by the business recipient. The claimant instead chose to substitute his own name in violation of the company's policy and the warnings that had been served on him.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated July 9, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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