

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARYLYS L WEILAND
Claimant

APPEAL NO. 08A-UCFE-00023-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

OC: 07/20/08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

U.S. Postal Service (employer) appealed a representative's August 21, 2008 decision (reference 01) that concluded Marlys L. Weiland (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 15, 2008. The claimant participated in the hearing. Angie Pettinger appeared on the employer's behalf and presented testimony from one other witness, Tim Humpal. During the hearing, Employer's Exhibits One through Nine were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July of 1996. She initially was a part-time rural carrier associate in a small community's post office, but transferred to the employer's Ankeny, Iowa, post office in about January 2004. As of about July 2006, she was put into the position of a part-time flex carrier associate, in which position she worked 35 to 40 hours per week, most weeks working five days between Monday and Saturday. Her last day of work was November 1, 2007. She was confronted on an issue that day and sent home pending further action; on November 14 she was presented with a notice of removal.

She initially pursued the union grievance process to contest the notice of removal, but was advised that the employer was not willing to change its position. As a result, on February 21, 2008, she submitted a resignation in order to end the grievance proceedings.

The reason the employer issued its notice of removal was for unacceptable job performance. On October 31 the employer had been monitoring the claimant's deliveries and found there

were two pieces of misdelivered mail in the mail boxes into which the claimant had delivered mail. There was also a complaint of misdelivery of mail by the claimant on October 22 and three pieces of misdelivered mail on October 24.

Also included in the employer's notice of removal was that on October 31 there were a number of packages that the claimant had placed into plastic grocery bags and hung on the mail boxes. She had done so as the weather was inclement, the residents were not home, and there was no place near the door to place the packages. The employer had previously advised the carriers as a group that they should not hang packages in bags from the mail boxes, but should rather return the packages to the post office if they could not be safely left at the residence. The claimant acknowledged that at some point she had been in a group meeting where leaving packages in bags was addressed, but admitted that on October 31 she had not remembered that instruction. The issue was not one that had been addressed directly with her in the past or for which she had received any discipline or counseling.

The most recent warning given to the claimant prior to November 1, 2007 was nearly a year prior; this was a suspension for attendance on November 30, 2006. Prior to that, she had received some additional disciplinary warnings or suspensions for improperly following instructions in regard to parking her vehicle (November 2, 2006), for failing to drive safely (July 28, 2006), and for failing to verify accuracy to avoid misdeliveries (July 10, 2006).

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment; she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was unsatisfactory job performance. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally performed below the best of her abilities and up to the employer's expectations. Under the circumstances of this case, the claimant's misdeliveries and improper package deliveries in October 2007 were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence. The claimant's actions that led to the loss of her job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 21, 2008 decision (reference 01) is affirmed. The claimant did not voluntarily quit; the employer did effectively discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw