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

Appeal Number: 04A-UI-01377-C
OC: 01/04/04 R: 02
Claimant: Appellant (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, 4th 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)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Scandrett filed an appeal from a representative's decision dated February 3, 2004, reference 01, which denied benefits based on his separation from Federal Express Corporation (Fed Ex). After due notice was issued, a hearing was held in Des Moines, Iowa, on March 22, 2004. Mr. Scandrett participated personally and was represented by Scott Bandstra, Attorney at Law. The employer participated by James Graves, Senior Operations Manager, and was represented by Nick Mauro, Attorney at Law. Exhibits One, Two, and Three were admitted on the employer's behalf.

On March 24, 2004, a two-page letter and copies of two Fed Ex interoffice memoranda were left for the administrative law judge to be considered as evidence on Mr. Scandrett's behalf. The individual who left the documents did not identify himself. The documents have not been considered in the decision herein. The letter is unsigned and the administrative law judge will not admit anonymous statements. Admission of any of the documents after the hearing would deprive the employer of the opportunity to address and/or object to their admission. The parties were notified prior to the hearing of the right to present witnesses and evidence at the scheduled time of the hearing.

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. Scandrett began working for Fed Ex on September 12, 1983. He was employed full time as a courier. He was discharged pursuant to a policy which provides for termination of employment when an individual receives three disciplinary actions within a twelve-month period.

Mr. Scandrett received his first warning on March 18, 2003 because he had been involved in two accidents the employer considered preventable. On once occasion, he rounded a corner too fast, causing the vehicle to go into a ditch. On another occasion, he was backing out of a parking space, although he had been trained not to park in such a manner that he would have to back out of a space. Mr. Scandrett received his second warning on May 22, 2003 because he misrepresented the status of a package. He coded the package to indicate that delivery had been attempted but no one was available to receive it. In reality, there had been no attempt at delivery. The correct coding is crucial to the employer's ability to give a customer accurate information if there is an inquiry about the status of a package.

The final incidents which caused Mr. Scandrett to receive his final warning occurred on December 26. Employees had been advised that they were not to work more than 12 hours in a given shift. On December 26, Mr. Scandrett began working 30 minutes before his scheduled time because a coworker needed assistance and another scheduled employee had not yet arrived. He did not seek out a supervisor before beginning work 30 minutes early. The bulk of Mr. Scandrett's work on December 26 was done at Wells Manufacturing. Because of the volume of packages to be picked up, Mr. Scandrett did not take his 30-minute lunch break as required. He called his supervisor at some point to advise him that he was not going to be able to complete his work in the allotted 12 hours. He was told to do the best he could. Mr. Scandrett wound up working 12 hours and 40 minutes on December 26.

Subsequent to December 26, the employer received a complaint from Wells Manufacturing that a Fed Ex courier had been overheard using profanity while on the pay telephone there. There were two Fed Ex couriers there that day and the individual from Wells Manufacturing did not identify Mr. Scandrett by name. Fed Ex's dispatcher told the employer that Mr. Scandrett had used the word "fuck" in a conversation with him while calling from Wells Manufacturing. Mr. Scandrett denied using any profanity while on the telephone at Wells Manufacturing. Because his conduct of December 26 resulted in a third warning within 12 months, Mr. Scandrett was discharged on December 31, 2003.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Scandrett 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although past acts may be considered in determining the magnitude of a current act of misconduct, the final act which precipitated the discharge must constitute misconduct within the meaning of the law before a disqualification may be imposed. See 871 IAC 24.32(1).

The final conduct which triggered Mr. Scandrett's discharge was the fact that he worked more than 12 hours on December 26, in violation of a known standard, and the fact that someone reported that he had used profanity in a customer location on that date. Although Mr. Scandrett did violate policy by working more than 12 hours, his conduct did not evince a willful and wanton disregard of the employer's standards. He began work early in order to help a coworker when a second coworker had failed to show at the scheduled time. He skipped his lunch in order to handle a larger volume of work at a customer location. After hearing the testimony, the administrative law judge is of the opinion that Mr. Scandrett's efforts were motivated by his interest in making sure the work was accomplished on behalf of his employer. Moreover, he notified his supervisor that he was going to exceed the 12-hour standard but was not directed to return to the terminal. The employer did not identify any other occasions on which Mr. Scandrett worked more than 12 hours without authorization. The employer offered only hearsay testimony regarding the use of profanity by Mr. Scandrett. Although hearsay testimony is admissible, the administrative law judge is not inclined to give it more weight than Mr. Scandrett's sworn denial that he used profanity. He did not have a history of using profanity at work.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish that the final incident which caused the discharge constituted misconduct within the meaning of the law. Therefore, the administrative law judge is not free to consider other, past acts of misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 3, 2004, reference 01, is hereby reversed. Mr. Scandrett was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b