

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**YESICA I MADISON**  
Claimant

**APPEAL NO. 18A-UCFE-00021-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**C/O EQUIFAX: USPS**  
Employer

**OC: 04/01/18**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Administrative Code rule 871-24.32(9) - Suspension

**STATEMENT OF THE CASE:**

Yesica Madison filed a timely appeal from the April 25, 2018, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Madison was placed on disciplinary suspension effective March 28, 2018 for violation of a company rule. After due notice was issued, a hearing was held on May 22, 2018. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UCFE-00022-JTT. Ms. Madison participated and presented additional testimony through Russell Madison. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**ISSUE:**

Whether Ms. Madison was suspended for misconduct in connection with the employment that disqualifies Ms. Madison for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Yesica Madison is employed by the United States Postal Service (USPS) as a full-time mail clerk. Ms. Madison began her employment in 2012. On March 28, 2018, a pair of postal inspectors notified Ms. Madison that she was being placed on an "emergency leave" while the postal inspectors investigated an incident of violence that occurred between Ms. Madison and a male coworker, Hassan. Ms. Madison performs her work at a machine that sorts bundles of magazines. There are two operating sides to the machine and three employees assigned to the machine. The machine includes a colored light signal that indicates when one side or the other gets especially busy.

On March 28, Ms. Madison was working one side of the sorting machine with a coworker and Hassan was working on the other side of the machine. When the color signal on Hassan's side of the machine turned yellow to indicate his side was busy, Ms. Madison moved to that side of

the machine and asked Hassan if he needed help. Hassan responded to the offer of help in a belligerent manner. First, Hassan told Ms. Madison bluntly, "It's your job." Ms. Madison replied that she was asking if he needed help. Hassan replied, "It's your fucking job!" Ms. Madison told Hassan that he did not need to be an asshole. Hassan continued with similar belligerent comments. Ms. Madison then told Hassan that she did not want to hear him and to shut up. Ms. Madison then commenced performing her work on Hassan's side of the machine. Hassan continued to yell at Ms. Madison. Hassan called Ms. Madison a bitch. Hassan then got within a foot of Ms. Madison as she was backed against some cages. Hassan forcefully spat in Ms. Madison's face and hair. Ms. Madison is a domestic abuse survivor. Hassan's aggressive demeanor, aggressive conduct and proximity scared Ms. Madison. As Hassan towered over Ms. Madison, Ms. Madison thought he was about to hit her. There was at that moment no way for Ms. Madison to retreat from the area. Ms. Madison kicked Hassan in self-defense. As soon as Ms. Madison kicked Hassan, she realized it was the wrong thing to do. Hassan left the area to notify a supervisor that Ms. Madison had kicked him. This was the situation the postal inspectors planned to investigate while Ms. Madison was suspended from the employment.

Ms. Madison returned to the employment on May 22, 2018.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

In *FDL Foods v. Employment Appeal Board*, 456 N.W.2d 233 (Iowa Ct. App. 1990), the Iowa Court of Appeals held that the 10-times weekly benefit amount disqualification set forth in Iowa Code section 96.5(2)(a) did not extend to disciplinary suspensions. Under the court's reasoning there would no basis for disqualifying a claimant for benefits in connection with a temporary disciplinary suspension beyond the period of the suspension and no basis for relieving the employer of liability for benefits in connection with a temporary disciplinary suspension beyond the period of the suspension.

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 is not necessarily serious enough to warrant a denial of unemployment 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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995).

The employer did not participate in the hearing and did not present any evidence to meet its burden of proving misconduct in connection with the employment. The evidence in the record does not establish misconduct in connection with the employment. The evidence establishes that Ms. Madison's act of kicking Hassan occurred in the context of Hassan assaulting Ms. Madison. Hassan's act of spitting on Ms. Madison was an assault. Hassan's act of aggressively cornering Ms. Madison and towering over her caused her to reasonably fear that she was about to be further assaulted by a person with the physical ability to carry out an assault. Under the circumstances, Ms. Madison reasonably responded in self-defense by kicking Hassan. The employer has failed to present evidence to rebut Ms. Madison's testimony regarding the event in question.

Because the evidence in the record establishes a March 28, 2018 suspension for no disqualifying reason, Ms. Madison is eligible for unemployment insurance benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The April 25, 2018, reference 02, decision is reversed. The claimant was suspended on March 28, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs