

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANNON R MCGUIRE
Claimant

US POSTAL SERVICE
Employer

APPEAL 14A-UI-05308-GT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/20/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 15, 2014, (reference 01) unemployment insurance decision that denied benefits based upon claimant being placed on disciplinary suspension for violation of a company rule. The parties were properly notified about the hearing. A telephone hearing was held on June 10, 2014. Claimant participated personally and by attorney Mike Carroll. Employer did not participate.

ISSUE:

The issue is whether claimant was suspended for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mail flow controller and was involuntarily suspended from work on April 26, 2014. Claimant was helping a co-worker fix a computer problem at work. His chair slid out from under him and he fell towards the co-worker. The co-worker filed a criminal charge of assault against the claimant. The claimant has entered a plea of not guilty, and that matter has been set for trial.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

Iowa Code § 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(9) provides:

(9) 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating [suspending] claimant, 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 [suspension] of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge [suspension] is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

Inasmuch as employer has not met the burden of proof to establish that claimant acted in any manner to endanger a co-worker or that he acted deliberately or negligently in violation of company policy, procedure, or prior warning, the reasons for the suspension are not disqualifying and benefits are allowed.

DECISION:

The May 15, 2014, reference 01, decision is reversed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs