

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH L PETTIT**  
Claimant

**APPEAL NO. 07A-UI-03972-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRIORITY COURIER INC**  
Employer

**OC: 04/02/06 R: 03  
Claimant: Appellant (1)**

Section 96.6(2) – Timeliness  
Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Joseph Pettit, filed an appeal from a decision dated March 28, 2007, reference 06. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 2, 2007. The claimant provided a telephone number of (319) 241-4325, which is a cell phone. The claimant answered but before the hearing could begin the cell phone disconnected. By the time the record was closed at 3:17 p.m. he had not called back to indicate his cell phone was working again or to provide another number where he could be reached, and did not participate. The employer, Priority Courier, participated by Regional Manager Fred Anderson. Exhibits D-1, One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant filed a timely appeal and whether he was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Joseph Pettit filed an additional claim for unemployment benefits with an effective date of March 4, 2007. A decision disqualifying him from receiving benefits was mailed to his address of record on March 28, 2007. Mr. Pettit did not file an appeal from that decision until April 16, 2007, indicating he had never received the original decision, though it is not known how or when he learned of the decision since he did not receive it.

The claimant was employed by Priority Courier from May 19, 2005 until March 5, 2007, as a full-time delivery driver. He received a copy of the policy and procedure manual during the course of his employment. The manual informs employees they may be “released without notice” for certain types of “unacceptable behavior” which includes “immoral or indecent conduct while performing work for the company.”

On March 1 and 2, 2007, Manager Jim DeWeerd received separate complaints from two female employees about inappropriate comments made to them by Mr. Pettit. Mr. DeWeerd

consulted with Regional Manager Fred Anderson about the complaints. The claimant had told one woman she “had a nice ass” and to the other woman he said, “you turn me on.” This was determined to be a violation of the sexual harassment policy and the claimant was discharged by Mr. DeWeerd on March 5, 2007.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant's appeal shall be accepted as timely. His written statement that he did not receive the decision was not rebutted by the employer and the administrative law judge will accept the appeal.

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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant violated a known company rule by making inappropriate remarks to female co-workers. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of March 28, 2007, reference 06, is affirmed. Joseph Pettit is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css