

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH G MOFFAT
Claimant

APPEAL NO. 12A-UI-02465-VST

RECKER INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/15/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated March 5, 2012, reference 03, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 28, 2012. The employer participated by Russ Recker, owner. Although the claimant responded to the hearing notice, he did not answer his phone when called at 1:02 p.m. The administrative law judge left a detailed message for the claimant on how to participate in the hearing. The claimant was informed he must call by 1:10 p.m. At 1:10 p.m. the administrative law judge called the employer again. The employer had sent in a written statement and copies of the customer complaints. The employer did not provide additional testimony. The record consists of Employer's Exhibits 1-9.

ISSUE:

Was the claimant discharged for misconduct that disqualifies him from receiving unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

The employer is a contractor for Federal Express. Federal Express imposes very high standards on the employer for customer service. The claimant worked as a driver and delivery person. He was terminated on January 27, 2012, due to continuous mis-deliveries and mis-codes of packages. The employer was not eligible for \$1,040.00 in bonuses due to the claimant's mistakes. The final incident that led to the claimant's termination occurred on January 25, 2012. (Exhibit 7)

REASONING AND CONCLUSIONS OF LAW:

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Misconduct includes wanton carelessness that evinces a wanton and intentional disregard of the employer's interests. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was careless to such a degree that he did show an intentional disregard of the employer's interests. The employer is a contractor for Fed-Ex and Fed-Ex has high standards for customer service. The claimant knew that good customer service was required and despite warnings from the employer, continued to do his job in a reckless manner. He had numerous cases where he delivered packages to the wrong

address; failed to code information properly; and failed to treat customers with respect and apologize when mistakes were made. The claimant's conduct goes beyond simple negligence or unsatisfactory performance. Misconduct is established. Benefits are denied.

DECISION:

The decision of the representative dated March 5, 2012, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs