

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNA J MARTIN
Claimant

UNITED PARCEL SERVICE
Employer

APPEAL 15A-UI-12340-H2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the October 30, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 24, 2015. Claimant participated. Employer participated through Simon Nelson, Business Manager. Employer's Exhibit One through Seven were entered and received into the record.

ISSUES:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a small sorter beginning on June 21, 1995 through October 8, 2015 when she discharged. As part of a grievance settlement the claimant was rehired on November 5, 2015 making her separation from employer between October 8 and November 5 an unpaid suspension.

The claimant was discharged/suspended for allegedly yelling, spitting and pointing her finger at two of her coworkers. The two coworkers were also discharged and brought back as part of the grievance settlement. The claimant denies engaging in any conduct that was contrary to the employer's policies and instead indicates that she was the victim of harassment. The claimant's allegation is credible to the extent that the employer discharged the two other coworkers involved in the situation.

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).

The only person to offer testimony at the hearing who was actually a party to the conversation was the claimant. She denies engaging in any conduct that in anyway created a hostile or intolerable work environment for her coworkers. The claimant offers the more credible explanation as to what occurred. Inasmuch as employer has not met the burden of proof to establish that claimant acted in any manner to endanger a patient or that she 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 October 30, 2015, reference 01, decision is affirmed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs