

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**THOMAS A MYERS
2328 HWY 59
DEFIANCE IA 51527**

**US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318-9994**

**Appeal Number: 05A-UCFE-00037-RT
OC: 10/23/05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Thomas A. Myers, filed a timely appeal from an unemployment insurance decision dated November 18, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 12, 2005, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number at 1:01 p.m. he reached a voice mail identifying the telephone number as that which was dialed by the administrative law judge and that which was provided by the claimant. The administrative law judge left a message that he was going to proceed with the hearing and if the claimant wanted to participate he would need to call before the hearing was over and the record was closed. The administrative law judge provided an 800 number for the claimant to call. The hearing began and the record was opened at 1:09 p.m. and ended when the record was closed

at 1:23 p.m. and the claimant had not called during that time. Janet Plumb, Postmaster in Denison, Iowa, participated in the hearing for the employer, U.S. Postal Service. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer for several years, most recently on a part time limited duty assignment, until he was discharged on October 20, 2005. The claimant averaged 36 hours per week. The claimant was discharged for working unsafely and jeopardizing the lives of others. On August 22, 2005, the claimant was given an assignment for mail pickup, which required that he drive a postal vehicle. While operating a postal vehicle he ran into a parked car causing damage to each vehicle in the amount of approximately \$2,600.00 to \$2,800.00. When the claimant was given this assignment he did not object or refuse to take the assignment. After the accident the claimant did not stop and remain there until a policeman arrived nor did he call the police nor did he call the Postmaster, Janet Plumb, the employer's witness. The claimant was required to do all of these by employer's policies and state law. Rather, the claimant continued to operate the vehicle driving it between four and six miles. When the claimant arrived back at the post office, Ms. Plumb took the claimant to the hospital. At the hospital the doctor told the claimant he should not drive. The claimant informed Ms. Plumb that he had gone to one house but no one was there so he got back in his vehicle and finished his route. However, the area in which the accident occurred was residential and there were several houses in the vicinity.

That very day, August 22, 2005, the claimant had received an oral reprimand for sleeping on the job, which reprimand was in the presence of a union steward. Approximately three to four weeks earlier the claimant had also received an oral warning for sleeping on the job. The claimant informed Ms. Plumb after the accident that he had a blinding headache, which caused the accident, but he did not mention the headache when he was given the assignment. At fact-finding the claimant admitted that he had finished his route after the accident and further admitted that he should not have been driving the vehicle and that it was a mistake to do so. He stated he was on medications that made him tired. The claimant also conceded that he had been caught sleeping on the job.

Apparently, the claimant grieved this discharge to the union and there has been a decision made recently to give the claimant back pay and reemploy the claimant. Pursuant to his claim for unemployment insurance benefits filed effective October 23, 2005, the claimant has received no unemployment insurance benefits being shown as disqualified because of a discharge for disqualifying misconduct. The claimant has only applied for three weeks of benefits, from benefit week ending November 5, 2005 to benefit week ending November 19, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 employer's witness, Janet Plumb, Postmaster in Denison, Iowa, credibly testified, and the administrative law judge concludes, that the claimant was discharged on October 20, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. Plumb credibly testified that after being given an assignment for mail pick up requiring the operation of a personal vehicle, and without objection from the claimant, the claimant operated the vehicle and had an accident running into a parked car or parked vehicle. Both vehicles suffered damage in the amount of approximately \$2,600.00 to \$2,800.00. Rather than stop and wait for assistance or call the police, the claimant got in his postal vehicle and continued driving four to six miles. The claimant did not stop and remain at the site of the accident nor did he call the police nor did he call Ms. Plumb all of which he was required to do. When he returned to the post office the claimant was taken to the hospital and his physician told the claimant he should not drive. This occurred the same day the claimant had received a reprimand for

sleeping on the job. The claimant had also received a similar reprimand three or four weeks earlier for sleeping on the job.

The administrative law judge concludes that the claimant's actions in continuing to operate the vehicle after the accident were unsafe and they jeopardized the lives of others and, as a consequence, his actions were deliberate acts constituting a material breach of his duties and obligations arising out of his workers contract of employment and evince a willful and wanton disregard of the employer's interest and are, at the very least, carelessness or negligence of such a degree of recurrence, all as to establish disqualifying misconduct.

The claimant informed Ms. Plumb that the accident was caused by a blinding headache. If so, the claimant was clearly unsafe in continuing to drive with the blinding headache. The administrative law judge notes that the accident occurred on August 22, 2005, when the weather would have permitted the claimant to wait for assistance. Ms. Plumb credibly testified that the accident occurred in a residential area and there were several houses in the vicinity. At fact-finding the claimant testified that he was on some kind of medication that made him tired. If this were true, the claimant in no way should have been driving a vehicle if he was on medication that caused him to go to sleep. Clearly, under any of these scenarios, the claimant should not have been driving an employer's vehicle and once he had had his accident clearly and absolutely he should not have continued driving. The claimant did so and this was disqualifying misconduct.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The administrative law judge notes that Ms. Plumb testified the claimant had filed a union grievance and apparently, pursuant to the union grievance was reinstated to his work with back pay. The administrative law judge concludes that it is not now necessary to remand this matter for an investigation and determination as to whether the claimant would be ineligible to receive unemployment insurance benefits because at relevant times he was not able, available, earnestly and actively seeking work under Iowa Code section 96.4-3, because he has received no unemployment insurance benefits. If the back pay did not cover all of the claimant's period of unemployment, the remainder would be considered a suspension and under a disciplinary suspension the claimant is considered as discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). The administrative law judge has already concluded above that the claimant was disqualified to receive unemployment insurance benefits because of disqualifying misconduct.

DECISION:

The representative's decision of November 18, 2005, reference 01, is affirmed. The claimant, Thomas A. Myers, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

dj/kjw